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AN ESSAY

ON THE

GOVERNMENT OF DEPENDENCIES.

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GOVERNMENT OF DEPENDENCIES.

BY

GEORGE CORNEWALL LEWIS, Esq.

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" Toute espèce de lumière ne vient à nous qu'avec le tems ; plus sa progression est lente, plus l'objet entraîné par le mouvement rapide qui éloigne ou rapproche tous les êtres est déjà loin du lieu où nous le voyons. Avant que nous ayions appris que les choses sont dans une situation déterminée, elles ont déjà changé plusieurs fois. Ainsi nous appercevons toujours les événemens trop tard, et la politique a toujours besoin de prévoir, pour ainsi dire, le présent."—TURGOT, *Œuvres*, tom. ii., p. 343.

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PREFACE.

THE subjects comprised within the science of politics may be conveniently distributed under the three following main divisions:

1. The nature and form of a sovereign government, and its relations with the persons directly subject to it.

2. The relations between the sovereign governments of independent communities; (viz., international law or morality).

3. The relations of a dominant and a dependent community; or, in other words, the relation of supremacy and dependence.

The first of these three subjects comprehends the nature, origin, and form of a sovereign government, and its relations with its immediate subjects constituting a single political community. The various departments of this extensive subject have been treated by a long series of writers, ancient and modern, beginning with Plato and Aristotle, and reaching to the present time.

The second subject, comprehending the relations between the sovereign governments of independent states, has been treated by a numerous class of modern writers, from Grotius downwards.

The third subject is the relation of supremacy

and dependence: in other words, the relations between two political communities, of which one is dominant and the other dependent; both being governed by a common supreme government, the one directly and the other indirectly; and the latter being governed directly by a subordinate government.

The third, although it coincides in some respects with the other two subjects, is nevertheless essentially distinguished from both of them. With the first, it comprehends a supreme government, but considers it only in its relations with a community which it rules indirectly, and not in its relations with its immediate subjects. With the second, it considers the relations of separate communities, but differs from it, in not considering the relations of independent communities.

The third subject has not hitherto, as far as I am aware, been professedly examined in a separate investigation. Whenever the subject has been considered by political writers, it has been considered only incidentally, and in combination with colonization, foreign trade, and other questions belonging to the province of economical science. This incidental consideration of the subject, in combination with other matters having no essential affinity with it, has naturally thrown over it a general indistinctness and obscurity. Thus, for example, the idea of a *dependency* is by many writers confounded with that of a *colony*; a confusion which renders it nearly impossible that a clear and precise concep-

tion of the political relation in question should be formed.

The following essay is intended to explain the third of the three subjects above adverted to, viz., the nature of the political relation of supremacy and dependence, and to develope some of the principal consequences which that relation involves.

For the purpose of elucidating fully the ideas included in the notion of a *subordinate government* (upon which the definition of a dependency adopted in the ensuing pages is founded), I have prefixed to the essay an inquiry, in which I have attempted to explain the distinction between supreme and subordinate powers of government, together with some other questions related to it. This preliminary inquiry is detached from the essay, and the latter may be read without it.

The essay itself falls into two parts. One part considers the ideas which the relation of supremacy and dependence necessarily implies, and without which it cannot be conceived to exist. The other part considers the advantages and disadvantages arising to the two related communities from their connexion with each other. The expediency or inexpediency of this connexion to each of the two communities is determined by facts which vary infinitely, and which cannot be comprehended in any general expression. Nevertheless there are certain leading facts which, though not universal, reappear with such steadiness and uniformity in

different dependencies, that they serve to throw much light on the expediency of this relation to the related communities; and general inferences can be drawn from them, which will materially assist in determining how far the relation is expedient in any individual case.

Whatever advantages may belong severally to monarchical, aristocratical, or democratical institutions, it cannot be overlooked that the chief nations of Europe and America now keep nearly abreast in the march of civilization, notwithstanding the diversity in the forms of their supreme governments. Moreover, it can scarcely be denied that the ulterior progress of these nations mainly depends upon the nature of the opinions prevailing among the bulk of the people; that where the public opinion is unenlightened, no political forms can be an effectual security against unwise and mischievous exercises of the powers of government; and that where the public opinion is enlightened, political forms lose a large portion of their meaning and importance.

One of the main obstacles to the formation of an enlightened public opinion, by a calm examination of important social facts and principles, as well as to the creation of habits of order, industry, and forethought, to the accumulation and diffusion of wealth, and to the gradual development of a healthier state of society, is produced by the occurrence of wars between civilized nations. Wars of

this sort destroy wealth, divert labour from useful objects, disturb commerce and credit, arrest the progress of internal improvements, shake the confidence of men in one another and in their government, and paralyse the energy of the wise and good by making them despair of the cause of human advancement.

The only effectual security against the occurrence of such wars is to be found in an improved international morality, and a more faithful observance of its maxims. But though such wars are mainly to be prevented by an improvement in the relations of independent communities, they are also in some measure to be prevented by an improvement in the relations of dominant and dependent communities. If, therefore, the following essay should assist in explaining the nature of the relation between a dominant and a dependent community, in showing the extent of the advantages which the former community can derive from its supremacy, and in indicating the sources of the disputes likely to arise between them, it would tend to diminish the chances of the greatest calamity to which the civilized world is now exposed.

It might likewise contribute to the same end, by exhibiting the nature and extent of the political evils which are inherent in the condition of a dependency. If the inhabitants of dependencies were conscious that many of the inconveniences of their lot are not imputable to the neglect, or ignorance, or selfishness of their rulers, but are the necessary con-

sequences of the form of their government, they would be inclined to submit patiently to inevitable ills, which a vain resistance to the authority of the dominant country cannot fail to aggravate.

London, May, 1841.

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INQUIRY

INTO THE

POWERS OF A SOVEREIGN GOVERNMENT.

Subject stated.

SINCE a dependency is a territory placed under a subordinate government, the subject of the following Essay renders it necessary for me to investigate the nature of a subordinate government.

In order to understand the nature of a subordinate government, it is necessary to understand the distinction between supreme and subordinate powers of government, and the nature of the delegation by which the latter powers are created. This distinction is closely connected with the distinction between the legislative and executive powers of government; and, indeed, has been considered by some writers as nearly identical with it.* Since these questions have not been examined with sufficient fulness for my present purpose, I propose, before entering upon the subject of the following Essay, to inquire into the nature of the powers of a sovereign government,

* See Note (A) at the end of the volume.

and the manner in which those powers may be delegated.

Extent of the powers of a sovereign government.

The first question to be considered is, what is the extent of the powers of a sovereign government?

It may be said generally that a sovereign government can do all that can be done by the united power of the community which it governs; or, more strictly, that it can do all that can be done by so much of the power of the community as it can practically command.

The power of a sovereign government has not a *less* extent than that which has been just stated.

It can seize persons, imprison, put to death, levy war, carry on trade, build, make roads, maintain schools, coin money; and, in short, do any other of the innumerable acts which may be done by a society of men who are not impeded or compelled by superior force.

It is an error to suppose that a sovereign government is subject to any other than moral restraints, and that it does not possess an absolute and despotic power.* All attempts to limit legally the power

* See, for example, Locke on Civil Government, Part II. § 171—2. Hobbes, however, in his Leviathan, had already decided the question by the following lucid explanations. "A fourth opinion repugnant to the nature of a commonwealth is this, *that he that hath the sovereign power is subject to the civil laws.* It is true that sovereigns are all subject to the laws of nature, because such laws be divine, and cannot by any man be abrogated. But to those laws which the sovereign himself, that is, which the commonwealth maketh, he is not subject. For to be subject to laws, is to be subject to the commonwealth, that is, to the sovereign representative, that is, to himself; which is not subiection, but freedom from the

of a sovereign government by positive laws, promises, compacts, and constitutional checks or balances, are nugatory. It is likewise absurd to deny to a sovereign government the power, or, as it is commonly called, the *right* of doing certain acts, such as inflicting death or bodily pain, of taking property, &c. When the right of a sovereign government to do any act is denied, nothing more is meant than that the government ought not, in the speaker's or writer's opinion, to do the act. This expression is, therefore, merely a concise formula for assuming the question at issue. The opinion just adverted to is merely a variety of the ancient notion that the laws of a bad and oppressive government have no binding force, and, therefore, are not laws. A conversation on this subject, said to have taken place between Pericles and the young Alcibiades, is reported in Xenophon's Memoirs of Socrates. Pericles at first answers the inquiries of Alcibiades correctly, by saying that every decree of the sovereign person

laws. Which error, because it setteth the laws above the sovereign, setteth also a judge above him, and a power to punish him; which is to make a new sovereign; and again for the same reason a third, to punish the second; and so continually without end, to the confusion, and dissolution of the commonwealth."—(Part II. ch. 29.) "The sovereign of a commonwealth, be it an assembly, or one man, is not subject to the civil laws. For having power to make and repeal laws, he may, when he pleaseth, free himself from that subjection, by repealing those laws that trouble him, and of making of new; and consequently he was free before. For he is free, that can be free when he will: nor is it possible for any person to be bound to himself; because he that can bind, can release; and therefore he that is bound to himself only, is not bound."—(Part II. ch. 26.) Compare also some good remarks of Blackstone on this subject, Commentaries, vol. i. p. 161—2.

or body in a state is law; but he afterwards (incorrectly) retracts this opinion, and says that the legislative acts of a tyrant, the legislative acts of an oligarchy to which the bulk of the people do not consent, and the legislative acts of a democracy to which the rich do not consent, are not laws.*

On the other hand, the power of a sovereign government has not a *greater* extent than that which has been stated.

For example, it cannot suddenly augment the quantity of food in a country, except by importation from abroad, and, consequently, it cannot change scarcity into plenty, if the foreign supplies should be scanty and dear.

The power of a sovereign government is further limited to that portion of the force of the community which it is able practically to command. The question whether it is physically possible for a law to be executed, is different from the question whether a law is likely to be executed. Thus it would be physically impossible to execute a law for changing the course of the seasons, or the height of the tides. On the other hand, there are many laws which might be carried into effect with the universal consent of the community, but which a sovereign government, from the unwillingness of a large portion of the community to submit to them, would be

* Xen. Mem. Socrat. i. 2. § 41—6. Compare Le Mercier de la Rivière, Ordre Naturel et Essentiel des Sociétés politiques, ch. 15. (tom. i. p. 186); "Le pouvoir législatif n'est au fond que le pouvoir d'instituer de *bonnes* loix positives."

unable to enforce. Such are, for example, over severe penal laws, vexatious revenue laws, usury laws, laws prohibiting the export of coin, laws regulating prices and wages.*

It is also to be observed, that there are acts possible to some sovereign governments which are not possible to others. Since the power of a sovereign government is limited to the united forces of the persons forming the community which it governs, it is natural that many things should be within the power of the government of a large and rich nation which are not within the power of the government of a small and poor nation. Again, the progress of civilization increases the power of governments, as well as of persons, or bodies of persons, in a private capacity. Thus many a small and feeble state could now produce results which would have surpassed the powers of the most mighty nations of antiquity.

Blackstone, in describing the powers of the British Parliament (which is the sovereign government of the British Empire), says, that "it can do every

* "Dans l'ordre politique, c'est toujours la partie la plus foible qui gouverne la partie la plus forte; et la force de celui qui commande, ne consiste réellement que dans les forces réunies de ceux qui lui obéissent." Le Mercier de la Rivière, ubi sup. ch. 6. (tom. i. p. 69.) "La force commune ou sociale, qu'on nomme *force publique*, ne se forme que par une réunion de plusieurs forces physiques ce qui suppose toujours et nécessairement une réunion de volontés, qui ne peut avoir lieu qu'après la réunion des opinions, quelles qu'elles soient. Ce seroit donc renverser l'ordre, et prendre l'effet pour la cause, que de vouloir donner à la force publique, le pouvoir de dominer les opinions, tandis que c'est de la réunion des opinions qu'elle tient son existence et son pouvoir." Ib. c. 8. (tom. i. p. 94.)

thing that is not naturally impossible; and, therefore, some have not scrupled to call its power, by a figure rather too bold, the omnipotence of parliament."* The phrase "omnipotence of parliament" (as Mr. Christian has remarked on the passage in Blackstone) "signifies nothing more than the supreme power of the sovereign state, or a power of action uncontrolled by any superior." The remarks which we have made above, likewise, indicate the limitations with which the statement must be taken, that parliament can do every thing which is not *naturally impossible.*

Modes in which the powers of a sovereign government may be exercised.

The next question to be considered is, how may the powers possessed by a sovereign government be exercised.

The modes by which a sovereign government may exercise its powers can be conveniently reduced to the four following heads:—First; it may exercise its powers in the way of legislation. Secondly; it may exercise its powers by special commands or acts intended to carry into effect a pre-existing law. Thirdly; it may exercise its powers by special commands or acts not intended to carry into effect a pre-existing law. Fourthly; it may exercise its powers by inquiring into some fact or facts, for the purpose of guiding its conduct in some measure or proceeding falling under one of the three heads just enumerated. These four powers may be re-

* Commentaries, vol. i. p. 161.

spectively styled the *legislative*, *executive*, *arbitrary*, and *inquisitorial* powers of a sovereign government.

We will now proceed to consider the nature of each of these powers.

Nature of the powers of a sovereign government. 1. Legislative power

First. A sovereign government may issue a general command; that is, make a law, properly so called; or it may declare a general intention of doing certain acts, or of pursuing a certain course of conduct; which declaration is also commonly called a law. For example, it may issue a general command to its subjects not to kill, or take the property of others, excepting under certain circumstances; or it may declare a general intention of performing certain services for the public, such as the conveyance of passengers, goods, and letters, and the maintenance of roads, bridges, lighthouses, harbours, hospitals, schools; or of supplying the public with certain commodities, such as tobacco, gunpowder, or salt.

A sovereign government may issue a general command, either independently of any other general command, or for the purpose of carrying into effect another general command which it had previously issued; that is to say, a law may be made either for its own sake, or for the purpose of carrying another law into effect.

Laws made for the purpose of carrying other laws into effect are often made by subordinate legislatures, as will be shown presently.

2. Executive power of a sovereign government.

Secondly. A sovereign government may issue a special command, or it may do an act directly

affecting some person or persons, and not involving a general command.

If the special command or act be founded on, and be in pursuance of, a general command previously issued, or a general declaration of intention previously made, by such government, the command or act is styled *executive*.

Thus, if a sovereign government has issued a general command, or law, prohibiting its subjects from killing or taking the property of others, except under certain circumstances, and denouncing a certain punishment for the contravention of such law; then, if some person should contravene any of its provisions, the government proceeds to issue certain special commands, or to do certain acts, for the purpose of inflicting upon him the punishment in which the sanction of the law consists. When a crime has been committed, the steps which the government takes for detecting, apprehending, detaining, trying, convicting, sentencing, and punishing the supposed offender by means of policemen, public prosecutors, judges, and jailers, or other ministers of criminal justice, consist in a series of special commands or acts in execution of existing laws. In like manner, when a sovereign government has declared a general intention of pursuing a certain course of conduct, it proceeds to issue the special commands, or to do the acts, which may be necessary or expedient for accomplishing its purpose. For example, if a government has declared its intention of making war against another independent state,

of carrying passengers, goods, or letters, of trading in a certain commodity, of issuing money, or of relieving all destitute persons found in its dominions, it employs persons, makes purchases of goods, and enters into the other specific arrangements which are requisite in order to enable it to carry these several intentions into effect.

In every case in which a sovereign government issues a general command or law, or makes a general declaration of intention, it supposes that such general command or declaration will be carried into execution by special commands or acts. No general command or law of a sovereign government would be obeyed, unless the persons subject to it thought that the government was prepared, in case any person should disobey it, to inflict upon him the pain in which its sanction consists, and unless they saw its sanction actually inflicted upon the persons who disobey it. Again, in every case in which a sovereign government makes a general declaration of intention, such declaration would be nugatory, unless the government adopted the means requisite for carrying its intention into effect. Consequently, an act of legislation by a sovereign government implies the necessity of future executive acts; and every executive act pre-supposes a prior legislative act which is carried into execution. Unless a sovereign government were prepared to carry its general commands or laws, and its general declarations of intention, into effect, by means of special commands or acts, its general commands or declara-

tions would be nugatory. Its general commands would lose their imperative character, and would become mere recommendations or rules of positive morality, having for their sanction as much of the public opinion as the government could enlist on its side. Its general declarations of intention would become mere voluntary promises, or pollicitations, which it would take no steps to perform. On the other hand, an executive act implies the existence of a prior general command or general declaration of intention; in other words, of a prior legislative act, which is to be carried into execution. It follows, therefore, that the legislative and executive acts of a sovereign government mutually imply each other.

The reasons which render it expedient for a sovereign government to issue general commands, or laws, will be stated lower down. The executive officers of a sovereign government issue special commands in order to avoid the necessity of acting without a previous command; that is, the necessity of applying force. For example, a tax-gatherer orders a man to pay a certain sum which he owes to the government as a tax; a policeman orders a suspected criminal to walk to gaol; in both these cases a special command is first issued in order to avoid the necessity of compelling the payment or imprisonment by force. In like manner, a sovereign government may perform certain acts, not involving the use of force, in order to avoid the necessity of using force. For example, a government desirous

of obtaining men or supplies for an army or navy, may pay a bounty to recruits, or may purchase supplies at the market price, instead of levying men by impressment, or seizing and taking goods by force.

Executive commands or acts may, in general, be divided into the two classes of *judicial* and *administrative.*

Executive powers divided into judicial and administrative powers.

A *judicial* proceeding is a declaration by a competent authority, after preliminary complaint and inquiry, that a person has or has not brought himself within the terms of a certain penal enactment, or that he has or has not a certain legal right or obligation which another disputes with him.

An *administrative* proceeding is for the purpose of carrying a law into effect, where there is no question about the legal culpability, or dispute about a legal right or obligation of a person. The distribution of titles or rewards, the collection of the taxes, the purchase of articles for the army or navy, the legal relief of a destitute person, the conveyance and delivery of letters through the public post-office, the apprehension and prosecution of a person accused of a crime, the execution or imprisonment of a convict, the making and issuing of money, the maintenance of places of education, the keeping of a public registry of lands, deeds and wills, births, deaths, and marriages, are instances of administrative acts.

In an administrative proceeding the government functionary acts or may act spontaneously; in a

judicial proceeding he does not act until he is set in motion by an accusation or plaint addressed to him. Thus the power of a visitor of a college in an English university, or of a charitable foundation, which may be exercised at his own pleasure, and without any complaint being preferred to him, is to this extent administrative and not judicial.

Moreover, in order to found a judicial proceeding, it is necessary, not only that an accusation or plaint should be addressed to the judge, but also that the party who is accused or complained of should have an opportunity of defending himself against such accusation or plaint; whereas, an administrative proceeding may take place without the necessity of allowing any such opportunity of explanation to the persons whom it may affect.

The only case in which a judicial proceeding is dispensed from these preliminary conditions is where an offence is committed in the presence and within the sight of a judge.* Under these circumstances, the usual requisites of an accusation and an opportunity of defence are sometimes dispensed with, and the judge acts at once with an administrative authority.

If no crimes were committed, and if there were no disputes about rights and obligations, there would be no need of judicial acts; the functions of the judge would never be called into action. But the machine of civil government would stop, if the administrative functionaries did not act; if, for ex-

* See Blackstone's Commentaries, vol. iv. p. 286.

ample, the taxes were not collected. It is, therefore, necessary that an administrative functionary should be able to initiate his interferences, and not have to wait, like the judicial functionary, until he should be set in motion by one of the public.

Hence, the term *administrative* may be properly confined, in accordance with the ordinary usage, to executive acts not judicial. In judicature proper, there is no administration, no *management*, as there is in finance, public works, government lands, relief of the poor, keeping of schools, carriage of letters, military and naval organization. A judge hears and determines, and orders his decision to be carried into effect. He executes the law, but administers nothing.*

* The meaning of the terms *executive* and *administrative*, which is adopted in the text, appears to be that most consistent with the etymology of the words, and with existing usage.

Executive is properly a generic word, including all the different modes of giving effect to a law. To *execute* a law is to follow out a general rule into its special consequences. The term *executive* is used in a generic sense by Locke, Montesquieu, and others. So, in the English law, an executor is "he to whom another man commits by will the execution of his last will and testament."—Blackstone Com. vol. ii. p. 503, which is not the execution of a judicial sentence.

On the other hand, *administration* seems to imply active management, or stewardship; like the German *verwaltung;* which is inconsistent with the passive character of a judicial functionary, who does not act until he is set in motion from without. Accordingly, in the English law, an administrator is the distributor of the goods of an intestate under the ordinary. The limited meaning assigned in the text to the term *administrative*, agrees with its use in France, and the other continental states. See Degerando, Institutes de Droit administratif Français, tom. i. p. 17, 18.

But, as might have been anticipated, there has been much inconsistency in the use of these two terms,

1. The term *executive* is sometimes used in a specific sense, and is opposed to *judicial*, instead of comprehending it. As so used,

It should, however, be observed that functionaries, whose business is principally judicial, sometimes perform administrative acts, and that functionaries, whose business is principally administrative, sometimes perform judicial acts. Thus the administration of the property of minors, lunatics, bankrupts, and intestates, and the appointment of new trustees, though performed in England by various courts, are not judicial functions. Indeed, all acts of voluntary, as opposed to contentious, jurisdiction are properly administrative. On the other hand, judicial decisions are sometimes made

meaning nearly agrees with that of *administrative*, as defined in the text. In the English law, the terms "execution of a judgment," and "capital execution," appear to be used in this limited acceptation. Ducange in executor says; "In libris jurisconsultorum, dicuntur executores qui judicum mandata et decreta exequuntur." In the constitution of the United States, the executive power is distinguished from the legislative power on the one hand, and from the judicial power on the other: see Art. 1, 2, 3. The word 'vollziehend' is used with this meaning by Hugo: "Der Kaiser hat (he says) bald allein, bald mit dem Senate, die gesetzgebende, die vollziehende, und die richterliche Gewalt, auch in Bestrafung der Verbrechen." Geschichte des Römischen Rechts, vol. i. p. 952.

2. The term *administrative* is sometimes used in a generic sense, and includes *judicial*, instead of being opposed to it. Thus we speak of the "administration of justice," and generally of the "administration of a government." For example, in the well known verses of Pope;

> "For forms of government, let fools contest;
> Whate'er is best *administered* is best."

So the heads of the executive government are often called "the administration," and "ministers of state;" but "ministers of state" usually fill administrative offices, according to the definition given in the text. The same remark likewise applies to the term "ministers of religion."

It may be added that, in the English law, a "ministerial act" signifies an act which a public officer is bound to perform, and as to the performance of which he has no discretion.

by public officers, whose ordinary functions are administrative; for example, the decisions imposing fines and forfeitures made by the revenue boards of this country.

Some remarks will be made lower down on the exercise of legislative and executive powers by the same functionary.

It may be here observed, that the confusion which prevails concerning the supposed difference between a limited monarchy and a republic, is in some measure connected with the distinction between legislative and executive powers. It seems to be thought that if a king is a merely executive officer, the government is republican; but that if a king has a share in the legislative sovereignty, the government is monarchical.* This notion is in truth erroneous; since a king who has only a share in the legislative sovereignty is properly not more a monarch than a king who has no such share; but it is founded on a perception of the fact, that the legislative are more important than the executive functions of government.

Thirdly. A sovereign government may issue a

3. Arbitrary powers of a sovereign government.

* The following remarks are made by M. Thiers, on the discussions respecting the power of the king in the constitution proposed for France at the beginning of the Revolution of 1789:

"La monarchie réelle, telle qu'elle existe même dans les états réputés libres, est la domination d'un seul, à laquelle on met des bornes au moyen du concours national. La volonté du prince y fait réellement presque tout, et celle de la nation est réduite à empêcher le mal, soit en disputant sur l'impôt, soit en concourant pour un tiers à la loi. Mais dès l'instant que la nation peut ordonner tout ce qu'elle veut, sans que le roi puisse s'y opposer par le veto, le roi n'est plus qu'un magistrat. C'est alors la république avec un seul consul au lieu de plusieurs." Hist. de la Rév. Française, tom. i. p. 153, ed. 4. Compare Penny Cyclopædia in Monarchy.

special command, or do an act, not founded on, or in pursuance of, a general command previously issued, or a general declaration of intention previously made, by such government. Such a special command or act may be styled *arbitrary*, inasmuch as it proceeds from the *arbitrium* of the sovereign person or body.*

* When a person voluntarily regulates his conduct according to a rule or maxim which he has previously announced his intention of conforming to, he is thought to deprive himself of *arbitrium*, free will, discretion, or *willkühr*, in the individual act. Hence when a government acts in an individual case, not in conformity with a pre-existing law or rule of conduct, laid down by itself, its act is said to be arbitrary Agreeably with the notion that a voluntary submission to a general maxim is equivalent to external compulsion, it is thought that a sovereign government is subject to positive laws: see above, p. 2, and below, p. 32.

In the Roman law, an *actio arbitraria* was an action depending on the *arbitrium* of the judge. "Præterea quasdam actiones arbitrarias, id est, ex arbitrio judicis pendentes, appellamus; in quibus, nisi arbitrio judicis is, cum quo agitur, actori satisfaciat (veluti rem restituat vel exhibeat vel solvat, vel ex noxali causa servum dedat) condemnare debeat."—Inst. IV. 6. § 31.

The term *arbitrary* is often used improperly, as synonymous with *despotic;* because despotic governments have been characterized by arbitrary acts properly so called (see below, p. 28.) It is thus twice used in two consecutive pages by Adam Smith.

"The law, so far as it gives some weak protection to the slave against the violence of his master, is likely to be better executed in a colony where the government is in a great measure *arbitrary*, than in one where it is altogether *free*." (Wealth of Nations, b. 4. c. 7. vol. ii. p. 395.)

"That the condition of a slave is better under an *arbitrary* than a *free* government is, I believe, supported by the history of all ages and nations."—(Ibid. p. 396.)

In these two sentences, *arbitrary* is opposed to *free*, in the sense of *despotic* as opposed to *popular*. But in the same passage, he says: "In a country where the government is in a great measure *arbitrary*, where it is usual for the magistrate to intermeddle even in the management of the private property of individuals, and to send them perhaps a *lettre de cachet*, if they do not manage it according to his liking, it is much easier, &c."

Here *arbitrary* is used in its proper sense.

For example, a command issued by a sovereign government, prohibiting the future exportation of all corn, or all implements of war, would be general, and, therefore, a law. But a command issued by a sovereign government, prohibiting the exportation of all corn, or all implements of war, then shipped and in port, would be special and arbitrary, and therefore, not a law.* Again, a special command or act inflicting a punishment upon a single person, or subjecting him to some legal disqualification, would, if it were in pursuance of an existing law, be executive, but, if it were not in pursuance of an existing law, it would be arbitrary.

Arbitrary commands, when issued by the sovereign body of a republic in a legislative form, were known to the Greeks by the name of *psephismata*.† The use of *psephismata* was frequent in several of the Greek democracies in the age following the Pelo-

Locke, in his Essay on Civil Government, calls *arbitrary power* by the name *prerogative*.

"The power (he says) to act according to discretion for the public good, without the prescription of the law, and sometimes even against it, is that which is called prerogative."—(Part II. § 160.) Again: "Prerogative can be nothing but the people's permitting their rulers to do several things, of their own free choice, where the law was silent, and sometimes too against the direct letter of the law, for the public good; and their acquiescing in it when so done." —(Ib. § 164.) And further on, he adds: "Prerogative is nothing but the power of doing public good without a rule."—(Ib. § 165.)

Prærogativa, in the Roman law, appears to have signified any legal advantage or privilege. (Dirksen, Manuale Lat. font. J. C. R. in v.) In the English law, the term is only applied to the powers which can be legally exercised by the crown; as, *e. g.* the power of choosing the ministers of state, or of declaring peace and war.

* See Blackstone, Comm. vol. i. p. 44.

† See Schoemann de Comitiis Atheniensium, cap. 7. Hermann's Greek Antiquities, § 67, note 8.

ponnesian war, and the administration of a government by means of them was considered characteristic of a democracy. In Athens, the frequent recourse to arbitrary *psephismata* was partly owing to the restraints imposed by the forms of the constitution upon new legislation; restraints which were intended to check the popular tendency to innovation, and to assist the aristocratic party or class in maintaining the existing laws unchanged.* The arbitrary commands of the sovereign government in a monarchy or aristocracy appear to have had no peculiar name in Greece;† although they were, doubtless, at least as proportionally frequent as the arbitrary commands of the sovereign assembly in a democracy.

Among the Romans, an arbitrary command issued by the sovereign government in a legislative form was styled a *privilegium.*‡ The name *privi-*

* Schoemann, ibid. p. 159. 250.—Compare Aristot. Rhet. I. 1. *ἡ μὲν τοῦ νομοθέτου κρίσις οὐ κατὰ μέρος οὐδὲ περὶ τῶν παρόντων, ἀλλὰ περὶ μελλόντων τε καὶ καθόλου ἐστίν· ὁ δὲ ἐκκλησιαστὴς καὶ δικαστὴς ἤδη περὶ παρόντων καὶ ἀφωρισμένων κρίνουσιν.* Aristotle here classes the ecclesiast with the dicast, and opposes them jointly to the nomothetes, or legislator; because the questions decided by the popular assemblies were commonly of the nature of *privilegia;* whereas laws were generally referred to a body of *nomothetæ.* The thirty men of Athens, and the decemvirs of Rome were properly legislative commissions of this sort.

† Aristotle, however, in a passage of the Politics, which will be cited presently (see p. 25), appears to call the arbitrary commands of monarchs *ἐπιτάγματα.*

‡ Tunc leges præclarissimæ de xii tabulis tralatæ duæ; quarum altera privilegia tollit . . . . Et nondum natis seditiosis tribunis plebis, ne cogitatis quidem, admirandum, tantum majores in posterum providisse: in privos homines leges ferri noluerunt: id est enim privilegium: quo quid est injustius? cum legis hæc vis sit, scitum est jussum in omnes. Cicero de Leg. III. 19. Compare Ulpian, Dig. l. I. t. 3. § 8. Jura non in singulas personas, sed generaliter constituuntur. A similar distinction, with respect to the constitutions of the Roman Emperor, is made in the Institutes. Quod-

legium is ancient in the Roman law, since it occurred in the twelve tables, which contained a clause condemning the use of them.* A *privilegium* properly meant an arbitrary measure passed by the sovereign assembly of the people, which affected a single person. An arbitrary command is usually directed against one or more persons by name, and does not include a number of persons determined by a general description. A command which is confined to a single person is not, however, necessarily arbitrary, although it may not be founded on an existing law. For example, a protection to a person against his *actual* creditors would be arbitrary, but a similar protection against *all his future* creditors would be general, and, therefore, a law.†

A *privilegium* having originally meant an arbi-

cunque imperator per epistolam constituit, vel cognoscens decrevit, vel edicto præcepit, legem esse constat; (that is, has a legal or binding effect) hæc sunt, quæ constitutiones appellantur. Plane ex his sunt quædam personales, quæ nec ad exemplum trahuntur, quoniam non hoc princeps vult. Nam quod alicui ob meritum indulsit, vel si cui pœnam irrogavit, vel si cui sine exemplo subvenit, personam non transgreditur (viz. privilegia). Aliæ autem, cum generales sint, omnes proculdubio tenent, (viz. laws). I. 2. § 6. The word *privilegium* is compounded of *privus* and *lex; i. e.* lex in privum hominem: it is to be observed that *lex* meant not only a general rule, but also a decision about an individual case: see Hugo Geschichte des R. Rechts, vol. i. p. 327. (ed. xi.)

* See the passage of Cicero cited in the last note; and compare the remarks of Mr. Austin on the effect of this prohibition, in his Province of Jurisprudence, p. 270.

† The following seems to be an example of a law being a *general* rule to be observed by a *single* person.

"If it please the king, let there go a royal commandment from him, and let it be written among the laws of the Persians and the Medes, that it be not altered, That Vashti come no more before king Ahasuerus."—Esther i. 19.

trary command, or a peculiar law, affecting a single person, has subsequently come to mean a peculiar law affecting a class of persons; and thus we speak of the privileges of the clergy, the nobles, the army, and members of the supreme legislature. In England, the powers which either House of Parliament can exercise by itself and of its own authority, are called the privileges of such House of Parliament.

Examples of arbitrary commands in the English government are furnished by bills of pains and penalties, bills of attainder, divorce bills, and private estate bills, the power of pardoning convicts, or of commuting their sentences, which is exercised by the crown, and the general power of dispensing with the laws in individual cases, which the crown formerly claimed. The powers of dispensing with the rule respecting the age of marriage, and with certain prohibitions respecting marriages between kindred, which are reserved to the king by the French civil code, are also arbitrary. (Art. 145, 164.) The *lettres de cachet* under the old French monarchy likewise afford a well known example of an exercise of arbitrary power. Indeed, arbitrary interferences with the domestic affairs of private persons, especially for the purpose of maintaining (what was called) the *honour of families*, were practised to a great extent by the governments of the continental states up to the period of the French revolution.*

* The following passage from Madame de Staël's work on the French Revolution (though it is incorrect in confounding despotic power with an arbitrary exercise of it, and also in denying to the French *coutumes* the appellation of law), yet contains an accu-

Equity, as popularly understood, is an arbitrary exercise of power.

The popular notion of *equity*, as administered by a court of justice, likewise supposes an arbitrary power, or, in other words, a power of deciding without regard to existing laws or rules of law.

The original idea of equity makes it a mode of interpreting written laws: viz., a departure from the literal meaning of the words of a law, for the purpose of giving effect to its supposed general scope or purpose.

"Equity" (says Aristotle) "is justice not according to the law, but in correction of the law. The cause of this is, that a law is general, and there are some things which it is impossible to express in general terms. Wherever, therefore, it is necessary to use general terms, and it is impossible to do so with accuracy, the legislator in drawing a law makes use of terms which provide for the ordinary cases,

rate description of the extent to which arbitrary departures from the law occurred under the old French monarchy.

"La France a été gouvernée par des coutumes, souvent par des caprices, et jamais par des lois . . . . Dira-t-on qu'il y avoit des pays d'états qui maintenoient leurs anciens traités? Ils pouvoient s'en servir comme argumens: mais l'autorité du roi coupoit court à toutes les difficultés, et les formes encore subsistantes n'étoient, pour ainsi dire, que des étiquettes maintenues ou supprimées selon le bon plaisir des ministres. Etoit-ce les nobles qui avoient des priviléges, excepté celui de payer moins d'impôts? Encore un roi despote pouvoit il l'abolir. Il n'existoit pas un droit politique quelconque dont la noblesse pût ou dût se vanter: car se faisant gloire de reconnoître l'autorité du roi comme sans bornes, elle ne devoit se plaindre ni des commissions extraordinaires qui ont condamné à mort les plus grands seigneurs de France, ni des prisons, ni des exils qu'ils ont subis."—Considérations sur la Révolution Française, partie i. ch. xi. See also the account of the government of Frederick William of Prussia, in Schlosser's Geschichte des achtzehnten Jahrhunderts, vol. i. p. 231. sqq.

knowing that some extraordinary cases are left unprovided for. And in so doing he acts rightly; for the defect is not in the law, or in the law-maker, but in the nature of the subject. Consequently, whenever a case arises which is included in the general terms of the law, although not falling within its scope, the defect which arises from the generality of the terms of the law ought to be remedied in a manner which the legislator himself would approve, if he were present, and which he would have provided for in the law if he had foreseen the case. Equity, therefore, is the correction of the law where it is defective through the generality of its language. Accordingly, there are some things to which a law is inapplicable, and in which it is necessary to resort to a *psephisma*; for that which is indeterminate cannot be governed by a general rule."*

All sovereign governments have found it necessary to leave certain matters to the *arbitrium boni viri*, or the discretion of the judge.† On account of the defects of every system of jurisprudence, (some arising from the imperfection of language, and others from want of skill or attention in the law-maker,) many of the decisions of courts of

* Eth. Nic. v. 14. See this passage expanded in Grotius de Æquitate, Indulgentia, et Facilitate, cap. i.

† Such questions, for example, as questions of "due diligence," "reasonable notice," and the like, in the English law, where the amount of diligence and the length of the notice is left to the discretion of the tribunal. These are questions (in the words of Grotius), "quas lex non exacte definit, sed arbitrio boni viri permittit." —Ibid. cap. i. § 2.

justice are arbitrary in the individual case, and have, as respects that case, an *ex post facto* operation; although the decision when once made may establish a rule for future cases.

The common notions respecting equity go still further, and seem to suppose an administration of justice, not according to pre-established rules of law, but according to certain obscure sentiments of moral justice, awakened in the mind of the judge by the circumstances of the individual case, and by the general character and conduct of the litigant parties, or of the accused person.*

* This seems to be the idea of *clementia*, as understood by Seneca. 'Clementia (he says) liberum arbitrium habet; non sub formulâ, sed ex æquo et bono judicat.' De Clem. ii. cap. ult. A vivid exemplification of the vulgar notions respecting equity may be found in Hutton's account of the cases decided in the Birmingham Court of Requests, which has been lately reprinted in a cheap form by Mr. Chambers of Edinburgh. One of the commonest conceptions of equity seems to be, that the decision of the court ought to be guided, not by a rule of law applicable to the individual case, but by the general character and conduct of the litigant parties, or the accused person; and consequently that whenever an honest man and a rogue are parties in a suit, the court ought to decide in favour of the honest man. The following may serve as examples of this mode of viewing equity.

If a man who has seduced a woman by a promise of marriage, which he has not fulfilled, is sued by her for money which he does not legally owe her, she is entitled equitably to recover it.

If a man is accused of having committed a certain crime, and the evidence at the trial does not support the accusation, the man ought equitably to be convicted, because the court know (or suspect) that he committed some other crime.

If an incumbent does not reside in his parish, and he is assessed too high for his tithes, the assessment ought not to be reduced on appeal, because he is non-resident.

The rule of the English Courts of Equity as to a plaintiff coming into court "with clean hands," seems to have some affinity with the notion of equity just adverted to. It is however scarcely neces-

Every form of government may be conducted arbitrarily.

Every government, whether monarchical, aristocratical, or democratical, may be conducted arbitrarily, and not in accordance with general rules. There is not, and cannot be, anything in the form of any government, which will afford its subjects a legal security against an improper arbitrary exercise of the sovereign power. This security is to be found only in the influence of public opinion, and the other moral restraints which create the main differences in the goodness of supreme governments. The distinction between a government administered according to law, and a government not administered according to law, was familiar to the ancient politicians, and is pointed out by them in respect to each of the three forms of government. Aristotle respectively divides aristocracies and democracies into two classes according to the principle just stated; and his description of a democracy not administered according to law is so explicit that I am tempted to transcribe it here.

"One species of democracy" (he says) "is where the public offices are open to every citizen, and the law is supreme. Another species of democracy is where the public offices are open to every citizen, but where the people and not the law is supreme. The latter state of things occurs when the government is administered by *psephismata*, and not according to laws, and it is produced by the in-

sary for me to say, that the equity of English jurisprudence bears no resemblance to the sorts of equity which have been explained above.

fluence of the demagogues. In democracies administered according to law there is no demagogue; the most distinguished of the citizens presiding in the assembly; but where the laws are not supreme, demagogues arise. For the people become as it were a compound monarch, each individual being only invested with power as a member of the sovereign body; and a people of this sort, as if they were a monarch, seek to exercise monarchical power in order that they may not be governed by the law, and they assume the character of a despot; wherefore flatterers are in honour with them. A democracy of this sort is analogous to a tyranny (or despotism) among monarchies. Thus the character of the government is the same in both, and both tyrannize over the superior classes, and *psephismata* are in the democracy what special ordinances are in the despotism.* Moreover, the demagogue in the democracy corresponds to the flatterer (or courtier) of the despot;† and each of these classes of persons is

* καὶ τὰ ψηφίσματα ὥσπερ ἰκεῖ τὰ ἐπιτάγματα.

† The passage in the text seems to have suggested the following remarks of Hobbes respecting the comparative danger of arbitrary government in a monarchy and in a republic. "In monarchy there is this inconvenience; that any subject, by the power of one man, for the enriching of a favourite or flatterer, may be deprived of all he possesseth; which I confess is a great and inevitable inconvenience. But the same may as well happen, where the sovereign power is in an assembly: for their power is the same; and they are as subject to evil counsel, and to be seduced by orators, as a monarch by flatterers; and becoming one another's flatterers, serve one another's covetousness and ambition by turns. And whereas the favourites of monarchs are few, and they have none else to advance but their own kindred; the favourites of an assembly are many, and the kindred much more numerous, than of any monarch. Besides, there is no favourite of a monarch which cannot as well

the most powerful under their respective governments. It is to be remarked that the demagogues are, by referring everything to the people, the cause of the government being administered by *psephismata*, and not according to laws, since their power is increased by an increase of the power of the people, whose opinions they command. The demagogues likewise attack the magistrates, and say that the people ought to decide, and since the people willingly accept the decision, the power of all the magistrates is destroyed. Accordingly, it seems to have been justly said that a democracy of this sort is not entitled to the name of a constitution, for where the laws are not supreme, there is no constitution. In order that there should be a constitution, it is necessary that the government should be administered according to the laws, and that the magistrates and constituted authorities should decide in the individual cases respecting the application of them. So that if democracy is a constitution, it is evident that this state of things, in which the entire government is administered by *psephismata*, is not properly a democracy, inasmuch as no *psephisma* can be general."*

In the preceding passage, Aristotle describes the

succour his friends, as hurt his enemies: but orators, that is to say, favourites of sovereign assemblies, though they have great power to hurt, have little to save. For to accuse requires less eloquence, such is man's nature, than to excuse; and condemnation, than absolution, more resembles justice."—Hobbes' Leviathan, Part II. chap. xix.

* Polit. iv. 4. See note (B.) at the end of the volume.

tyranny of the Greeks, or despotism, as corresponding to the democracy which is administered arbitrarily; and in another place he distinguishes *tyrannies*, or despotisms, as being governed according to the mere *arbitrium* of the prince, from kingly monarchies which are governed according to law.* Other ancient writers likewise speak of the difference between the government of a king and a tyrant (or despot) as consisting in this, that the former governs according to law, and the latter against the law.† Montesquieu's distinction between a monarchy and a despotism is founded upon a similar principle. "A monarch (he says) governs by fixed and established laws; a despot governs according to his will and caprices, without laws and rules."‡ And again, he says, "In despotic states there are no laws, the

* Polit. iv. 10.

† Xenophon Mem. Socr. iv. 6 § 12, states that Socrates thought that a βασιλεία is administered according to the laws of the state; whereas a τυραννὶς is administered, not according to the laws, but as the ruler wills. A similar distinction between the government of a king and of a tyrant is attributed to Aristippus, the founder of the Cyrenaic school of philosophy: Ἀρίστιππος ὁ Κυρηναῖος φιλόσοφος ἔφη, τοσοῦτῳ βασιλείαν διαφέρειν τυραννίδος, ὅσον νόμος ἀνομίας καὶ ἐλευθερία δουλείας, Stob. Florileg. tit. 49. § 18. (vol. ii. p. 345. ed. Gaisford.) Βασιλέως τρόπος ὁ νόμος, τυράννου δὲ νόμος ὁ τρόπος, is an antithetical sentence cited from Synesius de Regno, c. 6. by Hermann, Gr. Ant. § 52. n. 6.—On the other hand, Demosthenes, inveighing against Philip's perfidy, represents kings and tyrants as equally hostile to legal government; Βασιλεὺς καὶ τύραννος ἅπας (he says) ἐχθρὸς ἐλευθερίᾳ καὶ νόμοις ἐνάντιος, orat. adv. Philipp. II. § 27, ed. Bekker. In like manner, Isocrates advises Demonicus to obey the laws made by kings, but to consider their *arbitrium* as more powerful than their laws; ἰσχυρότατον μέντοι νόμον ἡγοῦ τὸν ἐκείνων τρόπον. ad Demonic. § 37. ed. Bekker.

‡ Esprit des Lois, ii. 1. Le (gouvernement) monarchique est celui où un seul gouverne, mais par des lois fixes et établies; au lieu que, dans le despotique, un seul, sans lois et sans règles, entraîne tout par sa volonté et par ses caprices.

judge is his own rule. In monarchical states there is a law, and where it is precise, the judge follows it; where it is not, he tries to discover its spirit."* Indeed, monarchies strictly so called, and, above all, the Oriental monarchies, have been so characterised by arbitrary rule, (particularly as regards arbitrary arrests and special interferences with the regular administration of justice,) that the class of monarchies entitled despotisms has been considered by many writers as mainly distinguished by the arbitrary nature of the government.†

* Esprit des Lois, vi. 3. Dans les états despotiques, il n'y a point de lois: le juge est lui-même sa règle. Dans les états monarchiques, il y a une loi; et là où elle est précise, le juge la suit; là où elle ne l'est pas, il en cherche l'esprit.

† For example, in the following passages of Helvetius, "Je dis que notre constitution est monarchique, et non despotique; que les particuliers ne peuvent, en conséquence, être dépouillés de propriété que par la loi, et non par une volonté arbitraire; que nos princes prétendent au titre de monarque, et non à celui de despote; qu'ils reconnaissent des lois fondamentales dans le royaume."—Helvetius de l'Esprit, Disc. 3. c. 16.

"Dans les états où la loi seule punit et récompense, où l'on n'obéit qu'à la loi, l'homme vertueux, toujours en sûreté, y contracte une hardiesse et une fermeté d'ame qui s'affoiblit nécessairement dans les pays despotiques, où sa vie, ses biens, et sa liberté dépendent du caprice et de la volonté arbitraire d'un seul homme."—Ibid. ch. 19.

So Gibbon says: "The state, which he (Servius) had inclined towards a democracy, was changed by the last Tarquin into *lawless despotism*:" Decline and Fall, c. 44, ad init.; in which passage the words "lawless despotism" are not equivalent to "unlawful (or illegal) despotism." *Unlawful* or *illegal* would mean contrary to positive law; whereas *lawless* means not administered according to laws and rules, or arbitrary; like the horses of the Sun, when Phaethon attempts to guide them:

> Exspatiantur equi, nulloque inhibente per auras
> Ignotæ regionis eunt; qua quc impetus egit,
> Hac, *sine lege*, ruunt.
>
> Ovid. Met. ii. 202—4.

Reasons of the expediency of a government according to laws.

The expediency of administering a government according to general rules is now recognised in all civilised nations; nevertheless, the importance of adhering to rules is so great, that it may be useful to state the main reasons why legal is preferable to arbitrary government.*

In the first place, the establishment and announcement of general rules by a government for the guidance of its acts, enables its subjects to determine their conduct accordingly, in some of the most important concerns of life. The measures which a man takes in the management or disposition of his property must mainly depend on his expectations as to the future conduct of the government in enforcing contracts, in protecting industry or trade, and in distributing his property among his survivors. So manifestly expedient are general rules on such subjects as these, that the rudest and most arbitrary governments have, by means of courts of justice, administered, with more or less regularity, certain uniform laws with respect to contracts, and the succession of property. It is manifest too that in all societies which are above the lowest degrees of bar-

* The inexpediency of not governing according to laws is stated by Locke in the following manner: "The legislative or supreme authority cannot [*i. e.* ought not to] assume to itself a power to rule by extemporary, arbitrary decrees; but is bound to dispense justice, and to decide the rights of the subject, by promulgated, standing laws, and known, authorized judges." Essay on Civil Government, Part II. § 136. "Whatever form the commonwealth is under, the ruling power ought to govern by declared and received laws, and not by extemporary dictates and undetermined resolutions."—Ibid. § 137. See note (C.) at the end of the volume.

barism, such acts as intentional homicide, and robbery, must be frequently punished, and that therefore any person guilty of one of them must be exposed to a considerable chance of punishment.

In civilized countries, the utility of a great part of the civil law mainly rests on this ground. However imperfect its rules may be, they are at any rate rules, on the enforcement of which all persons may calculate, and by which they may, therefore, guide their conduct.*

This reason, it may be observed, equally proves the inexpediency of *ex post facto* laws, (or laws having a retroactive operation, and which consequently nobody could calculate upon,) and of government by arbitrary decision in individual cases. But an *ex post facto* measure, though it may be, and often is, special and arbitrary, may also be general, and therefore a law.

Secondly. The previous announcement of the rules by which a government is guided, tends to subject its spirit and conduct more effectually to the check of public opinion. There is a great difference between deliberate, universal, and avowed, and unpremeditated, particular, and casual rapacity and injustice. Many governments, which habitually

* χείροσι νόμοις ἀκινήτοις χρωμένη πόλις χρείσσων ἐστὶν ἢ καλῶς ἔχουσιν ἀκύροις· Thucyd. iii. 37, from the speech of Cleon, dissuading the revocation of the decree against the Mytileneans. "Si les tribunaux ne doivent pas être fixes, les jugemens doivent l'être à un tel point, qu'ils ne soient jamais qu'un texte de la loi. S'ils étoient une opinion particulière du juge, on vivroit dans la société sans savoir précisément les engagemens que l'on y contracte."—Montesquieu, Esprit des Lois, liv. xi. ch. 6.

act towards their subjects in the most oppressive manner, would be ashamed to reduce the maxims by which they are in fact guided, into the form of a law, and to publish it to their subjects and the whole civilized world. Governments of this kind usually tyrannize over their subjects by arbitrary acts, and disregard the laws in which they pay an empty tribute to humanity and justice. It may be further remarked, that when a government announces its intentions of heavily taxing and otherwise oppressing its subjects, and publishes the means by which it will carry these intentions into effect, its subjects can, to a certain extent, guard themselves, by evasion and fraud, against its acts. And if the oppression is likely to be great, they will be more likely to combine in order to resist by force, if they see that the measure affects all at the same time. If the oppression were irregular, uncertain, and partial, it would be far more difficult to excite a whole community, or a considerable part of it, to insurrection against the government.

The severe laws enacted by some of the southern states of the American Union against slaves prove the universality and intensity of the feeling in favour of slavery which prevails in those states. If the authors of those laws were ashamed of them, they would probably seek to attain their ends in a less open and direct manner. So likewise the criminal code of Maria Theresa, with its minute descriptions and engravings of the tortures which it sanctioned, produced a general feeling of disgust;

although it did not extend the practice of torture in the Austrian states, but only sought to prevent its capricious and unequal application.*

Error of supposing that arbitrary government can be prevented by positive laws.

It is the more important that the grounds of the expediency of legal, and of the inexpediency of arbitrary government, should be clearly understood, since no distribution of the sovereign power, no arrangement of constitutional balances or checks, can prevent arbitrary government and secure an adherence to rules. It appears, indeed, to be a common notion, both among ancient and modern writers, that laws are a restraint upon a sovereign government, from which it is unable, however desirous, to escape, if the constitution be well framed or balanced; and that it is a sign of a bad constitution of the government, and not merely of bad opinions in the sovereign person or body, if the government be not administered according to law. It seems to be thought that, by submitting to be guided by certain general rules, the person or persons composing a sovereign government lose their *arbitrium* or free will, and became subordinate to a superior power.† A similar meaning is implied in expressions, such as "the people are subject to the law and not to men," "the law governs and not men," "the rulers are the servants of the law," "the

* In this case, however, the principle, "Segnius irritant animos, &c." also applied.

† Plato, describing the licentiousness of an ultra-democratic community, says: τελευτῶντες γὰρ που οἶσθ' ὅτι οὐδὲ τῶν νόμων φροντίζουσι γεγραμμένων ἢ ἀγράφων, ἵνα δὴ μηδαμῇ μηδεὶς αὐτοῖς ᾖ δεσπότης. De Rep. VIII. p. 563. Concerning Plato's conception of νόμοι ἄγραφοι, see note (B.).

law is master."* Understood literally, statements of this sort convey an erroneous impression, since it is certain that in every sort of government the sovereign power must be legally unlimited, and that every government must be conducted by men.

The meaning which such figurative expressions convey merely is, that a sovereign government, having prescribed certain rules for the guidance of its own conduct and that of its subjects, observes and enforces those rules, and never alters them without giving notice of the alteration. In this respect, a government which voluntarily conforms to rules which it has itself laid down, and which no political superior can enforce, may be properly said (as St. Paul says of the virtuous gentile) to be "a law unto itself."† Aristotle, indeed, carries the comparison further, inasmuch as he compares the incontinent man, whose desires are too strong for his principles, to a state which, although it has good laws, observes them not, but transacts all its affairs by means of special decrees; whilst he compares the thoroughly depraved and unprincipled man to a state which abides by its laws, but has bad laws.‡

* See note (D.) at the end of the volume.

† ὅταν γὰρ ἔθνη τὰ μὴ νόμον ἔχοντα φύσει τὰ τοῦ νόμου ποιῇ, οὗτοι νόμον μὴ ἔχοντες αὐτοῖς εἰσὶ νόμος, Rom. ii. 14. The same expression had been previously used by Menander.

Δίκαιος ἂν ᾖς, τῷ τρόπῳ χρήσει νόμῳ.

Sentent. sing. 135, p. 307. ed. Meineke. See above, p. 27. note †. Compare Inst. II. tit. 17, ad fin. "Secundum hæc divi Severus et Antoninus rescripserunt: 'Licet enim (inquiunt) legibus soluti sumus, attamen legibus vivere volumus.'" And see Dig. l. 32. t. 1. fr. 23.

‡ Eth. Nic. vii. c. 11.

Confusion of arbitrary government and despotism.

From the manner in which arbitrary or despotic acts are sometimes opposed to legal power,* it must not be inferred that when an act of a sovereign government is not according to law, it is therefore illegal. No act of a sovereign government can be illegal, because it is itself the measure and standard of legality; but, as I have already explained, a sovereign government may do an act or issue a special command not founded on a pre-existing law. The error of denying the legality of the arbitrary acts of a sovereign government, or of saying that a government administered arbitrarily is not a government, and that a nation governed arbitrarily is not a nation,† is akin to the error, already men-

* It had been proposed in the senate, that a power of disqualifying any person from the government of a province on account of bad conduct and character should be given to the emperor. Tiberius declined this proposal, saying, among other things, "minui jura, quoties gliscat potestas; nec utendum imperio, ubi legibus agi posset;" Tacit. Ann. III. 69. Again, Tacitus states that an election of prætor taking place in the senate, Germanicus and Drusus recommended Haterius Agrippa, who was opposed on the ground that he had not the number of children which the law required of candidates for that office. "Lætabatur Tiberius, cum inter filios ejus et leges senatus disceptaret: victa est sine dubio lex; sed neque statim, et paucis suffragiis; quomodo, etiam cum valerent, leges vincebantur."—Ann. II. 51. The senate, with the emperor, may be considered as sovereign at this period.

† "En effet, à parler rigoureusement, un despote arbitraire commande, mais ne gouverne pas: par la raison que sa volonté arbitraire est au-dessus des loix qu'il institue arbitrairement, on ne peut pas dire qu'il y ait des loix dans ses états: or un gouvernement sans loix est une idée qui implique contradiction; ce n'est plus un gouvernement. A la faveur d'une force empruntée ce despote commande donc à des hommes que cette force opprime; mais ces hommes ne sont point des *sujets*, et ne forment point ce qu'on peut appeler une *nation*, c'est-à-dire, un corps politique dont tous les membres sont liés les uns aux autres par une chaine de droits et de de-

tioned,* of affirming that bad laws have no binding force, and that a law must, in order to be a law, produce beneficial effects, or at least have a beneficial tendency.

A similar confusion appears to prevail respecting the distinction between an *absolute* and a *limited* monarchy. It seems to be sometimes thought that the distinction between an absolute and a limited monarchy consists in this: that an absolute monarch governs arbitrarily, whereas a limited monarch governs according to laws. It is true that an absolute monarch (or a monarch properly so called) may, and indeed often does, govern arbitrarily; and it is true that in a limited monarchy (or a republic of which a king is head), the king, having only a share of the sovereign power, cannot in general alter or depart from the laws without the consent of the remainder of the sovereign body. But an absolute, or proper, monarchy might be governed according to the existing laws, as much as a so-called limited monarchy. The distinction between these two sorts of monarchies really consists in the number of persons in whom the sovereign power is vested. In an absolute or pure monarchy, one person possesses the entire sovereign power; in a monarchy which is said to be limited, the sovereign power is divided between the king (who is called the monarch), and

voirs réciproques qui tiennent l'Etat gouvernant et l'Etat gouverné inséparablement unis pour leur intérêt commun." Mercier de la Rivière, Ordre Naturel des Sociétés Politiques, ch. xxiii. (vol. i. p. 290).

* Above, p. 3.

other persons; that is to say, a limited monarch is not properly a monarch.

This confusion is thickened by the exemption from legal accountability which a king who possesses only a share of the sovereign power, sometimes enjoys in common with a king who possesses the entire sovereign power:

A sovereign body is legally unaccountable for every act done by it in its corporate capacity. But every member of such sovereign body may be legally accountable to it for the acts done by him in his individual and separate capacity. Consequently, in a political community, of which the sovereign government is vested in a body of persons, it is possible that there should be no person who is unaccountable for acts not done by him as a member of such body. On the other hand, a person who possesses the entire sovereign power in a political community (or a monarch properly so called) must be legally unaccountable not only for the acts done by him in his capacity of sovereign or monarch, but also for all his other acts;* inasmuch as there is no person to whom he can be legally accountable.

Now in the republican governments, which are called "limited monarchies," the king, although he cannot make a law binding on others, without the concurrence of the rest of the sovereign body, is usually, like a monarch proper, legally unaccountable. Thus in England, the king is, like the Roman

* Thus the Roman emperor was *legibus solutus;* see above, p. 33, note †.

emperor, *legibus solutus;* and is not amenable for his acts to any legal tribunal. Whereas, in the republican governments which are not called "limited monarchies," every member of the sovereign body is amenable for acts done by him in a private or domestic capacity. For example, the president of the United States is not less legally responsible for his acts done in a private capacity, than a member of the senate or the house of representatives.

Separation of the legislative and executive powers as a security against arbitrary government.

Of the constitutional contrivances for affording a security against arbitrary government, none has met with greater favour among political speculators than the providing that the legislative and executive powers of a sovereign government shall be exercised by different persons. When a constitutional arrangement of this sort is supposed to exist, there is said to be a *separation* of the legislative and executive powers of government; and when it is seen that no such arrangement exists, there is said to be a *confusion* or *mixture* of these powers.*

The earliest writer, as far as I am aware, who insisted on the importance of placing the legislative and executive powers of government in the hands of different persons, is Locke. His opinion respecting the expediency of separating the legislative and executive powers appears to have been chiefly founded on the rarity of arbitrary interferences with the execution of the law in the governments of England and Holland, as compared with the frequency of such interferences in the despotic govern-

* See note (E.) at the end of the volume.

ments of France, Spain, and other continental countries. The superiority of the English and Dutch governments in this respect, Locke seems to have attributed to a supposed separation of the legislative and executive powers; whereas it was in truth owing to the division of the sovereign power amongst a body of persons. He supposed the comparative badness of the monarchical governments of the continent in his time to arise from the accumulation of the legislative and executive powers in the same hands; whereas it arose mainly from the accumulation of all the sovereign, and especially the legislative, powers, in the hands of one person.

Afterwards Montesquieu, in his "Esprit des Lois" (first published in 1748), adopted Locke's views on this subject, and gave them some further developement. But his language is so vague, and his reasons so obscure, that it seems to me impossible to arrive at any certain conclusions as to his meaning, beyond the general doctrine laid down by Locke. Mr. Madison, however, who has examined this question with much ability in some papers of the "Federalist," after observing, correctly, that Montesquieu wrote with a constant reference to the British constitution, concludes that "Montesquieu's meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this: that where the whole power of one department is exercised by the same hands which possess the whole power of

another department, the fundamental principles of a free constitution are subverted."*

Le Mercier de la Rivière, the chief expositor of the political system of the French economists (whose work, entitled "L'Ordre Naturel et Essentiel des Sociétés Politiques," was first published in 1767), sees that the supreme legislature must command the executive powers requisite for enforcing its laws.† But he maintains with equal confidence that the separation of the legislative from the judicial functions is essential to a good system of government.‡

In consequence principally of the doctrines thus laid down by Locke and Montesquieu, the expediency of a separation of the legislative and executive functions of government became in the last century a sort of political axiom, which every one supposed himself to understand, and which no one thought of questioning.§ From England this maxim travelled

* Federalist, No. 47.

† "Quel que soit le dépositaire ou l'administrateur de la force publique, le pouvoir législatif est son premier attribut . . . Dicter des lois positives, c'est commander; et . . . le droit de dicter des lois ne peut exister sans le pouvoir physique de les faire observer. Il ne peut donc jamais être séparé de l'administration de la force publique et coercitive. Ainsi la puissance exécutrice, celle qui dispose de cette force, est toujours et nécessairement puissance législatrice," ch. xiv. (tom. i. p. 170).

‡ "Il est socialement impossible que l'autorité législative et la magistrature, ou l'administration de la justice distributive, soient réunies dans la même main, sans détruire parmi les hommes toute certitude de la justice et de la nécessité de leurs lois positives." ch. xii. tom. i., p. 137, and compare the end of ch. xvi. p. 212.

§ "No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-

to the English colonies in North America, and the framers of the federal constitution of the United States, as well as of the constitutions of the several states, endeavoured to carry it into effect, and supposed their endeavours to have been successful. The French subsequently borrowed it from the Americans, and an article was inserted in the Declaration of Rights, which was decreed by the Constituent Assembly in 1789, setting forth that "no society in which the guarantee of its rights is not made certain, or the separation of the powers determined, possesses a constitution." (Art. 16.)

Paley likewise, in his Principles of Moral and Political Philosophy, first published in 1785, insists on the importance of the separation of the legislative and judicial functions; which he calls "the first maxim of a free state."*

A full examination of the opinions which have been advanced by the writers just mentioned, respecting the separation of the legislative and executive functions of government, is not consistent with my present purpose; but I will state shortly the chief objections to which their doctrine appears to be liable.

1. A complete separation of the legislative and executive powers cannot exist in any constitution. For in every constitution the sovereign person or body must possess the power both of making

appointed, or elective, may justly be pronounced the very definition of tyranny . . . . The oracle who is always consulted and cited on this subject is the celebrated Montesquieu."—Federalist, No. 47.

* B. vi. c. 8.

laws, and of carrying them into execution.* The writers who have recommended the separation of the legislative and executive powers must have known that there cannot be two independent sovereignties in one political community, and consequently that the power of making laws, and the power of executing them, cannot be lodged in persons legally independent of each other. Their maxim respecting the separation of the legislative and executive powers was therefore probably intended only to imply a peculiar mode of delegating the governing powers; namely, that the sovereign government shall delegate to subordinates all its executive powers, but shall either reserve to itself the exercise of all its legislative powers, or, if it delegates any of its legislative powers, it shall entrust them to different persons from those in whom it vests its executive powers.

Even, however, if it be taken in this limited sense, the maxim is not consistent with the practice of any government which has hitherto existed. In most countries the supreme legislature, or its component parts, have performed some executive functions; and all governments have delegated extensive legislative powers to their executive functionaries.

For example, in the Roman republic, all the powers of government were confounded in the hands of the same functionaries. The following account of the power of the consuls in the early period of

* See Bentham, Tactique des Assemblées législatives, tom. ii. p. 344, and compare Le Mercier de la Rivière, cited above, p. 39.

the republic, is given by Hugo, in his history of the Roman law. "The branches of the supreme power (on the separation of which so much weight was laid at the end of the last century) were all united in the consuls. Of the *legislative* power they had the important right of presiding in the senate and the assemblies of the populus. The *executive* power they exercised chiefly in their capacity of commanders in war. And they even had a very important share of the *judicial* power, in the decision of private causes, and in the punishment of crimes."* So in England, the crown, although a part of the parliament or supreme legislature, is also the chief executive authority; the House of Lords, another branch of the parliament, is the Supreme Court of Appeal, and is also a court of original jurisdiction in the cases of crimes committed by certain classes of persons; and the House of Commons, the other branch of the parliament, determines the disputed elections of its own members: to which it may be added, that both houses punish for breaches of their privileges. Perhaps the most remarkable examples of the mixture of the legislative and executive functions are those which occur in the constitutions of the American States' governments, inasmuch as these are known to have been generally drawn with an intention of separating these functions, and sometimes contain an express statement of such intention. Mr. Ma-

* Geschichte des R. R., vol. i. p. 333. Hugo here uses "vollziehend," or "executive," in the limited sense explained above, in p. 13. note *.

dison, in discussing this maxim in the Federalist, remarks as follows: "If we look into the constitutions of the several states, we find that, notwithstanding the emphatical, and in some instances the unqualified terms in which this axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct." After showing that the maxim has been violated in the constitutions of New Hampshire, Massachusets, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North and South Carolina, and Georgia, he adds, that "it is but too obvious that in some instances the fundamental principle under consideration has been violated by too great a mixture, and even an actual consolidation of the different powers; and that in no instance has a competent provision been made for maintaining in practice the separation delineated on paper."—(Federalist, No. 47.)

It will be shown below, that in every government the executive functionaries are necessarily entrusted with powers, more or less extensive, of subordinate legislation, and that if they did not possess a power of making subsidiary laws, the main laws of the supreme legislature could not be carried into effect. The most striking instance of the delegation of powers of execution and subordinate legislation to the same functionary occurs in the judicial department; since a court of justice, besides its power of hearing and determining individual cases brought before it, generally possesses also a power of direct

legislation for regulating its own procedure, as well as a power of indirect legislation, by laying down the rules of law on which its decisions are founded.

But even if it were possible for a sovereign person or body to delegate all the executive powers, and to abstain from delegating any legislative functions to subordinate ministers, it does not seem that the proposed separation of powers would be beneficial.

The main advantage which Locke and Montesquieu attribute to a separation of the execution of the laws from the making of them, is, that it prevents arbitrary interferences with the ordinary administration of justice. But there is nothing to prevent a sovereign government, which has delegated all or most of its executive powers, from interfering arbitrarily with the acts of its subordinate functionaries. It is true that executive functionaries, being the ministers and servants of the sovereign government, cannot, of their own authority, set aside any law, and that they are legally bound to carry the existing laws into effect. But the sovereign government which gave them power to execute the laws can command them to depart from those laws in any individual case: and every such special command is as binding upon them as a law. On the other hand, there is no reason why the persons who have made a law should not execute it faithfully. It seems, indeed, natural to suppose that the authors of a law would in general be the most disposed to enforce it, and the least disposed to

permit departures from it. They may be presumed to be, in general, the best acquainted with its true meaning, and the purposes for which it was enacted.

The suggestion for the separation of the legislative and executive functions is doubtless an attempt to obtain a security against arbitrary government which is impossible; viz., by a legal restraint upon the exercise of the sovereign power; and it is therefore equally chimerical with other similar notions which have been adverted to above. Where a government is unprincipled, and the influence of public opinion is weak, no conceivable distribution of the legislative and executive powers will prevent arbitrary rule. Where a government has learnt to regard the interests of its subjects, and the influence of public opinion is strong, legislative and executive powers may be exercised by the same person or body, without any considerable risk of arbitrary rule.

Arbitrary more important than executive powers.

Before we quit the subject of the arbitrary acts of a government, it should be remarked, that the power of issuing arbitrary commands, though less important than the legislative, is far more important than the executive power. For an executive functionary is appointed to carry a certain law or certain laws into effect, and his discretion is in general confined within tolerably narrow bounds; whereas an arbitrary command or act, though limited to an individual case, is either in derogation of an existing law, or, at least, is independent of any such law. Accordingly, a supreme legislature is in general

sparing of its delegations of the power of issuing arbitrary commands; and when such commands are issued by a supreme legislature, they are, in order to mark their importance, usually invested with the forms of a legislative act.

4. Inquisitorial powers of a sovereign government.

Fourthly. A sovereign government may seek to ascertain certain facts, in order that they may serve as a foundation for some future proceeding of one of the three sorts above mentioned. This may be styled its *inquisitorial* function.

The important exercise of the inquisitorial function of government, which consists in the examination of witnesses, and the production of documentary evidence before courts of justice, may be considered executive, inasmuch as it subserves the execution of the laws. But investigations for legislative purposes, though they may be made in pursuance of a law, nevertheless are not instituted for the purpose of carrying any law into effect, and, therefore, cannot properly be styled executive. Such are the inquiries carried on in this country by committees of either house of parliament, (which is called the grand inquest of the realm,) and by special commissions appointed by the crown.

A sovereign government can likewise procure assistance for its deliberations by calling in the advice of counsellors; and, if necessary, paying them for it: but as useful advice can only be obtained from willing counsellors, governments have never used compulsory powers for this purpose.

Having considered the nature and extent of the powers of a sovereign government, and the different modes in which these powers may be *exercised*, I proceed to examine the modes in which the same powers may be *delegated*. The examination of this question is requisite for the purposes of the present inquiry; first, because the nature of executive powers cannot be fully understood until the delegation of powers to political subordinates is explained; and, secondly, because a dependency is immediately subject to a government acting exclusively by delegated powers.

Delegation of political powers by a sovereign government.

Political powers may be delegated in one of the two following modes:—

First; The person or persons, or some of the persons exercising the sovereign power in any political community, may exercise that power in consequence of being chosen by a body of persons designated in a certain manner. The persons making the choice are generally styled the *electoral* or *constituent* body; and the person or persons whom they choose are said to *represent* them, or to *be deputed by* them.

1. Delegation of political powers improperly so called.

Thus, assuming that the Pope legally exercises the entire sovereign power in the states of the church, such sovereignty is vested in him in consequence of his election by the College of Cardinals. In the British empire, the body which legally exercises the sovereign power is composed of the crown, the House of Lords (consisting of the spiritual peers, and the English, Irish, and Scotch

temporal peers,) and the House of Commons. To this body the Irish and Scotch peers belong in consequence of election by the general body of the Irish and Scotch peers, and the members of the House of Commons, in consequence of their election by certain classes of persons determined by law. In the United States the entire sovereign power may be exercised for any purpose not prohibited by the constitution, in each state, by a body composed of Congress and the peculiar legislature of such state; and the persons who are members of either of these bodies belong to it in virtue of their election by certain classes of the people. A body so constituted possesses in each of the United States the entire sovereignty, with the exception of the power of altering the constitution. This latter power is vested in an ulterior body, entitled a *convention*, which has never yet been called into activity.

The following are the usual marks of this mode of delegation. 1. The trust which this mode of political delegation confers is not a legal trust, guarded by legal duties and sanctions. A representative or deputy exercising, in consequence of an election, the whole or a portion of the sovereign power, is liable to no other restraints from his electors or constituents, in respect of his exercise of such power, than those which arise from the fear of forfeiting their good opinion, or incurring their censure. The electoral or constituent body, and the representative or deputy, do not stand to one another in the legal relation of principal and agent.

2. The electoral or constituent body cannot itself exercise the powers which it enables its representative or deputy to exercise. The College of Cardinals, for instance, cannot, during a vacancy of the Holy See, legally exercise the powers which belong to the Pope; nor can the electors of the Chamber of Deputiés in France or Belgium, of the House of Commons in England, of the House of Representatives, or a state legislature in the United States, or of a House of Assembly in an English dependency, legally exercise the powers which belong to each of those bodies. 3. The representative or deputy is commonly appointed by the electoral body for a time certain, and his appointment cannot be revoked by them until the expiration of the time. Thus, in England, a member of the House of Commons, when legally elected, is entitled (unless he becomes personally disqualified) to hold his office until a dissolution of parliament; and no act of his constituents can legally revoke his appointment for that period. This arrangement, however, does not necessarily exist; thus, it appears that, in Hungary, the appointment of a member of the Lower House of the Diet is made to last during the pleasure of his constituents, and that they can at any time revoke his appointment, if they should be displeased with his conduct. Moreover, in a government like that of the United States, the representative might be rendered legally responsible to his constituents, by the intervention of the body, similar to the convention of the United States, in which the ultimate sovereignty would reside. But

if a body of this sort were frequently called into existence, and exercised an active control over the ordinary legislature, the ordinary legislature would not be virtually sovereign, but would be a merely subordinate legislature.

2. Delegation of political powers, properly so called.

Secondly: The person or persons exercising the sovereign power in a community may delegate a portion of those powers to political subordinates. Thus, a sovereign government may delegate, with certain reservations, the power of making laws, or of issuing arbitrary commands; and it may delegate an unrestricted power of executing the laws. The trust which this delegation confers is a legal trust, guarded by legal duties and sanctions; and it can be revoked at the pleasure of the sovereign government. Moreover, the sovereign government might itself legally exercise the powers which it thus delegates, if it were convenient, or, indeed, possible for it to exercise them all directly.

From a comparison of the characteristics of the two modes of political delegation just examined, it follows that the latter mode is alone delegation strictly so called, and that the former mode only bears an analogy to proper delegation. It appears to be essential to delegation proper that the delegator should be himself entitled to exercise the powers which he delegates. Now this is not the case in the first mode of delegation above considered. The electors can exercise no portion of the sovereign power which they are said to depute to their representative. Their representative acquires by their election a portion of the sovereign power; but they

can scarcely be said to delegate or depute it to him. Accordingly, it seems to me that such electors may properly be said to have *political rights*, which would not be the case if the power exercised by them was a portion of the sovereign power; and it may be observed that the political rights of the electors can in general be altered or taken away by the sovereign legislative body, of which their representatives are members. In the following pages, whenever delegation is spoken of, the second mode of delegation, or delegation proper, is meant.

Political powers have been delegated in all communities.

It can scarcely be conceived that any community should exist, in which all the functions of government are performed by the sovereign person or body directly; and it is certain that, in all political communities which have actually existed, a large part of the functions of government has been delegated to subordinate ministers or functionaries.

The issue of general commands is the most important part of sovereignty; and it admits of being performed, to a considerable extent, by one person, or by several persons acting as a body. The detailed execution of general commands is of inferior importance; and it requires the services of a large number of persons acting independently, simultaneously, and in different places. Consequently, sovereign governments have, in general, exercised directly a large part of their legislative powers; but have invariably delegated nearly the whole of their executive powers. It may be here observed, that the distribution of the sovereign powers amongst a number of persons does not afford any facilities for

the direct exercise of those powers, since it is as difficult to do a political act by means of a body as by means of an individual person. For example, it would be as difficult for a sovereign body (such as the Parliament of England) to hear and determine all causes in its corporate capacity, as for a monarch to do the same. Whether the sovereign powers were lodged in a single person or in a body of persons, such person or body could form only one court for judicial purposes; and one court could not, without delegating its functions, hear and determine all the causes arising in a community of any considerable magnitude.

Supreme and subordinate legislation defined.

1. The legislative or law-making power may or may not be delegated by the sovereign person or body; in other words, legislation is supreme or subordinate.

Legislation is supreme when the law is issued by the sovereign person or body. In this case the law is generally issued in a written form.

Legislation is subordinate when the sovereign person or body delegates the legislative power to an inferior authority, which issues or makes the law.

The persons to whom a legislative power is delegated by the sovereign government are called subordinate legislators, and they are said to possess a power of subordinate legislation.

Direct power of subordinate legislation.

A power of subordinate legislation is sometimes *direct;* that is to say, the laws made in virtue of it are issued avowedly, and in an imperative form, by the subordinate legislature, and generally in writing.

In the Roman republic, laws were not only made by the sovereign legislative body, assembled in comitia, but also by the senate and the plebs, as subordinate legislatures.* Moreover, the prætors and ædiles, under both the republic and the empire, possessed and exercised important powers of direct subordinate legislation. The direct legislation of the prætors in particular, as contained in the prætor's edict, was the foundation of the chief part of the private law of Rome. Law made by the prætors and other magistrates, as subordinate legislators, was styled by the Romans *jus honorarium*.†

The following are cases in which direct powers of subordinate legislation have been delegated, expressly or tacitly, by the British Parliament.

1. The power of the king to make orders in council, affecting either the British isles or a British dependency. If a necessity for new legislation should arise at a time when parliament is not sitting, or if sudden legislative interference should be urgently required even during the session of parliament, a law can be made provisionally by the king in council. Thus the bank of England was restricted from making cash payments, during the

* Hugo, Geschichte des Römischen Rechts, p. 371-2. 406.

† Inst. I. 2. § 7. Prætorum quoque edicta non modicam obtinent juris auctoritatem. Hoc enim jus honorarium solemus appellare, quod qui honorem gerunt, id est magistratus, auctoritatem huic juri dederunt. Proponebant et ædiles curules edictum de quibusdam causis, quod edictum juris honorarii portio est.

Direct legislation by a subordinate legislature may be likened to customary law, if the legislative power has not been *expressly* delegated. Hence Hugo, G. des R. R., p. 369, says that *jus honorarium* stands between the direct legislation of the plebs and senate, and customary law.

session of parliament, by an order in council, issued on the 26th of February, 1797, and the restriction was subsequently confirmed by an Act of Parliament.

Also the power of the king, granted by the mutiny act, to make articles of war for the government of the land forces. The king does not possess a similar power over the navy; but the lord high admiral, or two of the commissioners of the admiralty, may make articles of war for the marines.*

2. Legislation by administrative departments, as the lords of the treasury and admiralty, the commander-in-chief, the post-master-general, the revenue departments, poor law commissioners, police commissioners, registrar-general.†

3. Power of the judges and of justices of the peace to regulate the procedure of their several courts, and to determine the fees of the officers of such courts.

4. Power of municipal corporations, guilds, universities, colleges, companies, and other corporate bodies, to make bye-laws and regulations.‡

5. Power of justices of the peace to make regulations for the government of gaols and lunatic asylums, and for other local purposes.§

Similar powers of subordinate legislation are

* See Blackstone's Commentaries, vol. i. p. 403. 408. Mutiny Act, § 35, 36.

† The Acts 2 Wm. IV., c. 10 and 11, empowered any two members of the Privy Council (of whom the President of the Council must be one) to make rules and regulations for the prevention of the spreading of the cholera in England and Scotland.

‡ Concerning the legislative power of colleges, see Law Magazine, vol. xix. p. 245.

§ See Report of the Poor Law Commissioners on the further Amendment of the Poor Laws (Dec. 1839), p. 20, ed. 8vo.

vested by the governments of France, and of the several German and Italian states, in all the chief administrative departments. The powers of subordinate legislation vested by these governments in the department of police are, in particular, very extensive. In France, the king has the power of making ordinances for carrying into effect the general provisions of a law made by the king and chambers on the subject of quarantine; the local quarantine authorities have a further power of making regulations subordinate both to the law of the king and chambers, and to the king's ordinances.

Power of specification.

It sometimes happens that a number of rights and duties are created by a sovereign government, which are only to take effect upon a declaration made by a subordinate legislature. Thus the English parliament has defined the rights and duties of its subjects in case of war; but it has vested in the Crown the power of declaring the country to be in a state of war, and, consequently, of calling these rights and duties into activity.* In like manner, the king is empowered by Act of Parliament to declare, by order in council, the places which render ships touching at them liable to quarantine, and also the places where ships are to perform quarantine.†

* In like manner, the crown has a power of legislating, by orders in council, respecting foreign trade in time of war. The celebrated orders in council respecting neutral ships in the late war are an example of this legislative power. It should, however, be observed that the power of the crown to make these orders in council was questioned in Parliament.

† 6 Geo. IV. c. 78. By sec. 6 of this Act, orders upon unforeseen emergencies respecting quarantine may be made by any two members of the Privy Council.

By another Act of Parliament, the king in council is empowered to direct at what places in a county assizes may be held, and to divide counties for the purpose of holding assizes in different divisions of the same county.* Another statute empowers the lords commissioners of the treasury to appoint the ports which shall be warehousing ports; and also empowers the commissioners of customs, subject to the directions of the lords commissioners of the treasury, to appoint in what warehouses any, and what sorts of, goods may be warehoused.† So the poor law commissioners were empowered to declare the day on which the Parochial Assessments Act was to come into operation.‡ This power is called by Mr. Bentham the "power of specification;"§ and the power of determining the persons who are to fill the executive offices may also be referred to it. The creation of the offices themselves is delegation by the sovereign government of its executive power.

Indirect power of subordinate legislation.

A power of subordinate legislation is sometimes *indirect;* that is to say, the laws made in virtue of it are not issued avowedly and in an imperative form by the subordinate legislature, but are implied in the usages which it sanctions, or the judicial decisions which it utters. All customary or con-

* 3 and 4 Wm. IV. c. 71.

† 6 Geo. IV. c. 112. The instances of the power of subordinate legislation adduced in the text may be compared with a power of appointment created by deed or will; as, for example, where money is given to children with a power to one of the parents of determining the shares in which they shall respectively take it.

‡ 6 and 7 Wm. IV. c. 96. See the Third Annual Report of the Poor Law Commissioners, p. 91. ed. 8vo.

§ Traités de Législation, tom. i. p. 313.

suetudinary law, and all law founded upon judicial precedents, or text writers of authority, and upon the practice of public departments, or legally constituted bodies, belongs to this head.

It would be an interesting problem to investigate the comparative quantity and character of the laws made directly by the supreme legislature of a country, and of the laws made directly and the law made indirectly, by the subordinate legislatures. The subject is too extensive for a full examination in this place, but a few remarks on it may be here introduced.

Hugo, in his "History of the Roman Law," after having stated that the laws made by the supreme legislature at Rome between the time of the twelve tables and the year 650 U. C. were very numerous, and chiefly concerned the *jus publicum*, or constitutional law, proceeds to remark, that supreme legislation has rarely concerned itself much with *jus privatum*, or the law of property and domestic relations.* A similar remark is applicable to the law of England. The legislation of the English Parliament has been chiefly concerned about subjects which seem properly to fall under the idea of *jus publicum*, such as the determination of the suffrage for the election of members of the House of Commons, and regulations for the conduct of their election; the imposition and collection of taxes; the regulation of offices, salaries, and pensions; the management of the army and navy; the criminal

* Geschichte des Römischen Rechts, p. 373.

law and its execution; the powers of the different courts, of justices of the peace, and of peace officers and policemen; the powers of municipal corporations; and the like. On the other hand, there are only a few important statutes concerning the law of property or other branches of *jus privatum*, such, for example, as the statutes of wills, of uses, of frauds, and of limitation of actions. The quantity of the laws made in England directly by subordinate legislatures is considerable; as orders of the king in council, the articles of war, general orders for the army, regulations of revenue departments, rules of practice made by the superior courts, bye-laws of corporations; not to mention laws made by subordinate governments in the dependencies: the character of these laws depends in general on the special delegation in virtue of which they are made. The law made indirectly by subordinate legislatures in England is of immense bulk and importance; for it comprehends nearly the whole of the *jus privatum*, inasmuch as nearly the whole of the *jus privatum* is due to the indirect legislation of the courts of law and equity, together with the ecclesiastical courts.

It will be found in general that nearly the whole of the *jus privatum* of every country has been formed by the indirect legislation of the courts, aided by the labours of juristical writers; and that it has only been issued directly by the supreme legislature, after it has been digested, from the existing materials, into the form of a code; as was the case with the Roman and French codes.

All laws made by virtue of a power of subordinate legislation, whether made directly or indirectly, emanate ultimately from the sovereign government; inasmuch as the sovereign government confers the power of making them, and applies the sanctions by which they are enforced.

All laws made by subordinate legislatures emanate from the sovereign government.

A power of subordinate legislation sometimes extends only to a certain subject or certain subjects, and the laws made in virtue of it are binding only on the persons belonging to a certain body, and not on the public generally. Such, for example, is the power of making bye-laws which is possessed by the college of physicians, or the college of surgeons, in this country. Sometimes it applies to the public generally, but extends only to a single subject, or a limited number of subjects; thus a power of subordinate legislation may be given for the purpose of carrying into effect the provisions of a certain law made by the supreme legislature (such as a law respecting quarantine), or for some specific purpose, such as making regulations respecting police, watching and lighting, or sewerage. Sometimes a power of subordinate legislation is included in a general delegation of political powers over a certain territory. A power of subordinate legislation, of this nature, extends over an unlimited number of subjects, and may be exercised over all the persons inhabiting such territory. A territory so circumstanced is styled a *dependency*, and the persons to whom general political powers (including a general power of legislation) over such territory are thus

A power of subordinate legislation is limited or unlimited as to subjects.

delegated, form its *subordinate government.* The detailed examination of the nature of a subordinate government is reserved for the following essay.

Characteristics of a power of subordinate legislation.

The main characteristics of a subordinate or delegated legislative power are—

1. *That it may be resumed at the pleasure of the supreme legislature which granted it.** If a legislature called subordinate could retain any power in defiance of the legislature called supreme, it would cease to be a subordinate legislature, and would, in fact, share the sovereign power with the so-called supreme legislature.

2. *That the laws made in virtue of it must not be inconsistent with any law or rule of law made or sanctioned by the supreme legislature in relation to the same subject-matter.* If a legislature called subordinate could, of its own authority, repeal or modify the laws or rules of law made or sanctioned

* This limitation of a power of subordinate legislation is probably what Locke meant by affirming, that "the legislative cannot transfer the power of making laws to any other hands."—On Civil Government, Part II. § 141. By "transfer," he doubtless meant "transfer *absolutely*," or "*without power of revocation*;" in which sense the proposition is strictly true; since an absolute grant to any person or persons of the legislative power would be a communication to such person or persons of the sovereignty. The reason which Locke assigns for this position is indeed erroneous, being founded on his doctrine of a social compact. "The power of the legislative (he says) being derived from the people *by a positive voluntary grant and institution*, can be no other than what that positive grant conveyed, which being only to make laws, and not to make legislators, the legislative can have no power to transfer their authority of making laws and place it in other hands."—Ibid. § 141. The power of the supreme legislature has not, and has never had, in any country the origin which Locke here imagines.

by the supreme legislature, it would be co-ordinate with, not subordinate to, such legislature. It is to be observed, that the laws of a subordinate legislature must conform, not only with the laws made *directly*, but also with those made *indirectly*, by the supreme legislature. Consequently, they must conform with a law made by a subordinate legislature in the dominant country, if such law should affect the dependency. For example, the subordinate government of an English dependency is bound by a rule of law established by an English court, so far as such rule of law extends to the dependency.

3. *That its legislative acts are liable to be annulled in consequence of the decision of a competent tribunal.* This attribute of subordinate legislation is a result of the necessity that its acts should not be inconsistent with a law of the supreme legislature: for if any act of a subordinate legislature is inconsistent with a law of the supreme legislature, it is illegal; and if it be illegal, there can scarcely fail to be a tribunal which is competent to declare its illegality.*

* Bentham states the marks of subordinate political powers as follows:

"La subordination d'un pouvoir politique à un autre est établi 1°. par la cassabilité des actes; 2°. par la sujétion aux ordres qu'il en reçoit."—Traités de Législation, tom. i. p. 315.

If by "cassabilité des actes" Bentham means that the court which annuls the acts of a subordinate legislature is generally superior to it, this condition is not necessary. The power of annulling the acts of a subordinate legislature may be entrusted to a court, which may, together with the functionary or body of functionaries whose acts are annulled, be subordinate to the sovereign government. The court is indeed superior to the subordinate legislature *for that particular purpose*, but not *generally*. On the other hand, if he means that the acts of a subordinate legislature can be repealed or modi-

It sometimes happens, that in consequence of invasion by a foreign enemy, or of internal dissensions, the affairs of a popular government reach a crisis demanding the rapidity and decision of execution, which can only be obtained from a single will. In such a crisis as this, the entire governing powers may be delegated by the ordinary sovereign government to an extraordinary officer, subject only to the limitation that the delegation can at any moment be recalled. Instances of this species of delegation in republics are afforded by the Greek Æsymnetes and the Roman Dictator. A similar delegation may, likewise, take place in a monarchy, with respect to a part of the monarch's dominions, if the monarch should be unable to be present on the spot, or should not possess the energy and efficiency requisite for

fied by the supreme legislature, the condition is equally unnecessary; for the acts of the supreme legislature can be repealed or modified by the supreme legislature. It seems, therefore, that by "cassabilité des actes," Bentham meant only that the acts of a subordinate legislature could be quashed by a competent tribunal, if they are illegal; according to the statement in the text. The second condition stated by Bentham (viz. the subjection to orders received from the supreme power) applies principally to *executive* functionaries.

The following passage respecting by-laws in Bacon's Abridgment describes with precision the second rule as to the acts of a subordinate legislature, which is stated in the text.

"A by-law, with a penalty of imprisonment, or forfeiture of goods and chattels, is void; for by the general law of the kingdom, no man is to be imprisoned or dispossessed of his goods and chattels, *nisi per legale judicium parium suorum, vel per legem terræ*; and were by-laws with such penalties allowed, it would be enabling corporations to set up private particular laws, in contradiction to the laws of the land; which would be against the very nature and essence of a by-law; which, though it may be *præter* the general law of the realm, it cannot be *contra*."—Bacon's Abridgment, By-law, (E.)

the occasion. The officer styled *alter ego* in the Neapolitan government, and perhaps known in some other of the modern governments of southern Europe, affords an example of the latter mode of delegation. Under such ample delegations as these, the officer possesses a power of subordinate legislation, discharged of the two last of the three conditions which have been just enumerated.

2. Since the power of issuing arbitrary commands is sparingly exercised by the supreme governments of civilized states, so it is not extensively delegated by them to political subordinates. Thus in England the power of dispensing with the laws is only conceded to the Crown and its officers, in certain cases, as for pardoning or mitigating the punishment of convicts, for remitting custom and excise duties, for excusing poor's rates. Generally, however, the power of dispensing with the laws in individual cases is in England exercised only by the supreme legislature, as in the cases of divorce bills and private estate bills.

2. Delegation of arbitrary powers by a sovereign government.

3. The next species of the delegation of the powers of government which we have to consider, is the delegation of *executive* powers to political subordinates.

3. Delegation of executive powers by a sovereign government.

These subordinates are called generally executive, or, according to their special department, judicial or administrative functionaries. The persons at the head of the administrative offices are usually called ministers of state.

It would be tedious to give a formal enumeration

Executive Officers.

of the several classes of the executive officers commonly employed by a sovereign government; but the following list will serve to exemplify the principal varieties of them.*

Collectors of public taxes, and of rents of government lands.

Paymasters.

Accountants.

Comptrollers and auditors.

Military and naval commanders.

Commissaries and guardians of naval and military stores.

Judges.

Policemen.

Persons charged with sanitary and quarantine regulations.

Ambassadors and consuls.

Ministers of religion.

Professors and schoolmasters.

Officers charged with the relief of the destitute.

Notaries public.

Registrars of births, deaths, and marriages.

The general nature of the executive powers delegated to these functionaries has been explained above; and it has also been shown that, unless the executive powers were delegated to a large number of subordinate officers, the laws of a sovereign government could not be carried into effect.

Comparative importance of legislative and executive powers.

With respect to the comparative importance of the legislative and executive powers, it may be

* Compare Hobbes, Leviathan, Part II. ch. xxiii.

observed that a sovereign government possesses both; and that, inasmuch as each of these powers implies the other, neither can exist alone. But the power of making laws, or issuing general commands, is the more important of the two, as being the more extensive in its operation; and, accordingly, the legislative power is in general only partially delegated by a sovereign government; whereas (as has been already remarked) a government in general delegates nearly the whole of its executive powers. The executive officers, inasmuch as they act by delegated powers, are subordinate to the sovereign government, and are merely its ministers, for the purpose of carrying its laws into effect. Hence it is in general an error to represent the legislative and executive departments as having co-ordinate and equal powers; since a sovereign government in general exercises its legislative functions, to a great extent, directly; whereas its executive functions are in general delegated to subordinates. Moreover, the power of making laws implies the power of determining the delegation of executive functions to subordinate officers, since it is by means of laws that the delegation is made.*

* "The executive power, *placed anywhere but in a person that has also a share in the legislature,* [this limitation is unnecessary] is visibly subordinate and accountable to it, and may be at pleasure changed and displaced . . . . Of other ministerial and subordinate powers in a commonwealth we need not speak, they being so multiplied with infinite variety, in the different customs and constitutions of distinct commonwealths, that it is impossible to give a particular account of them all. Only thus much, which is necessary to our present purpose, we may take notice of concerning them, that they

Nevertheless, as a general command would be nugatory, if means were not taken for enforcing it, and as it is the duty of the executive to enforce the general commands of the legislature, the executive often attracts the larger share of public attention, and the functions of government are supposed to reside more peculiarly in it.*

Moreover, an extensive power of subordinate legislation is always delegated to executive functionaries; such powers of subordinate legislation being always (except in the case of judges) limited to a certain subject or subjects, or to the purpose of carrying a certain law or laws into effect.

have no manner of authority, any of them, beyond what is by positive grant and commission delegated to them, and are all of them accountable to some other power in the commonwealth."—Locke on Civil Government, Part II. § 152. "When the legislative hath put the execution of the laws they make into other hands, they have a power still to resume it out of those hands, when they find cause, and to punish for any mal-administration against the laws."—Ibid. § 153. Montesquieu did not see that a sovereign government exercises directly most of its legislative functions, but delegates its executive functions to subordinates. "Il ne faut pas (he says) que la puissance législative ait réciproquement la faculté d'arrêter la puissance exécutrice."—Esprit des Lois, xi. 6. The legislative power, if that power be exercised by the sovereign government, must be superior to the executive power, if the executive power be exercised by subordinates.

* Speaking of an oath for abjuration of the Pretender, in a Bill brought into Parliament in 1701, Burnet says:

"The clause (in the oath) of maintaining the government in king, lords, and commons, was rejected with great indignation; since the government was only in the king; the lords and commons being indeed a part of the constitution, and of the legislative body, but not of the government."—Memoirs of his own Time, vol. iii. p. 413. In like manner, the term *government* is commonly applied to the ministers of the state, or the heads of the chief administrative departments; as when it is said that "there is to be a change of government," that "a person is a supporter of the government," &c.

Instances of the delegation of powers of subordinate legislation to administrative functionaries, as to the Roman edile, the Board of Treasury, and the revenue departments in England, the police department in France and other continental states, have been already given; and, indeed, perhaps every administrative officer has a power of subordinate legislation to a greater or less extent.

The most extensive exercise of the powers of subordinate legislation by executive functionaries is that made by the judicial department, whose indirect legislative powers are (it is to be observed) unlimited as to subjects. Some remarks have been already made on the extent of the law which owes its origin to judicial legislation, as compared with the extent of that which is formed by the supreme legislature.*

Reasons why powers of subordinate legislation are delegated to executive officers.

The following may be conceived to be the principal reasons which induce a sovereign government to delegate extensive powers of subordinate legislation to its executive officers.

If executive officers had no legislative power, and if they could issue no other command than a special command founded upon a law previously made or sanctioned by the supreme legislature, the laws of the supreme legislature could scarcely be executed. So great is, in general, the difficulty of foreseeing numerous remote contingencies, and of exhausting them by legal provisions, that the most carefully

* Above, p. 57.

considered and most skilfully executed work of legislation would scarcely stand the test of practice, unless it could be helped out with some subsidiary regulations made by the persons employed to enforce it. Moreover, it sometimes happens that a want of appropriate knowledge in the supreme legislature, and the scantiness of its time on account of the variety of the subjects which come before it, and successively claim a share of its attention, compel it to be comparatively vague and meagre in the composition of its laws; and to trust to its executive officers to supply the detailed regulations necessary for carrying its general directions into complete effect. It may be added, that changes of circumstances (such as the introduction of new customs or new inventions) would render many laws inoperative, if the executive officers did not possess a power of making such regulations as would adapt them to an altered state of things.

After a supreme legislature has laid down general rules of extensive application, subordinate legislatures, consisting of executive officers, can develope their provisions, and give them the requisite minuteness and completeness; having for that purpose a more flexible and manageable power than the supreme legislature, and being able to act with a less elaborate machinery.

The universal practice of delegating powers of subordinate legislation to executive functionaries, shows that the legislative and executive departments

of the government can be distinguished only by the powers exercised, and not by the persons exercising them.

4. Lastly, it remains for me to notice the delegation of the *inquisitorial* powers of a sovereign government. 4. Delegation of inquisitorial powers by a sovereign government.

Powers of inquiry for judicial and administrative purposes are delegated extensively to judicial and administrative functionaries.

A power of inquiry for legislative purposes is not in general delegated, except to a subordinate government. But the boundaries between legislative and executive inquiries are not always distinctly marked, since an inquiry for an administrative purpose may suggest improvements in the existing laws.

Respecting the means by which the powers of government are delegated, it may be observed, that they are delegated either expressly, by an oral or written declaration of the sovereign government; or impliedly, by a tacit signification of its pleasure; as, for example, by constitutional usage. Means by which political powers are delegated.

AN ESSAY ON THE GOVERNMENT OF DEPENDENCIES.

CHAPTER I.

Definition of a dependency and of a subordinate government.

In the preceding Inquiry, I have attempted to explain the nature of supreme and subordinate powers of government, and the mode in which the latter are delegated. I have also shown in it that by a general delegation of political powers a dependency with a subordinate government is created. The detailed examination of the nature of a dependency and its subordinate government was reserved for the present Essay.*

Dependency defined.

A dependency is a part of an independent political community which is immediately subject to a subordinate government.

Dominant country defined.

That part of the independent political community which is composed of the supreme government, and of the persons immediately subject to such supreme government, may, with reference to the dependency, be styled the *dominant community*, or *country*.†

* See above, p. 59.

† πόλις τύραννος, or πόλις ἀρχὴν ἔχουσα, according to the expressions of Thucydides. See Thuc. i. 122. 124. vi. 85. The word ἀρχὴ was peculiarly appropriated to dependencies; see Thuc. i. 67. ii. 96, 97. iii. 37, vi. 90.

M. de Sismondi uses a similar expression, in speaking of the

The supreme government is common to the dominant country and the dependency; but since the persons composing it are in general natives of the dominant country, and since it is the government to which the people of the dominant country are directly subject, the members of it may be properly considered as belonging to the dominant community.

Subordinate government defined.

A subordinate government* is a government which acts by delegated powers, but which possesses powers applicable to every purpose of government, which is complete in all its parts, and would be capable of governing the district subject to it, if the interference of the supreme government with its proceedings were altogether withdrawn.

A subordinate government resembles a sovereign

Venetian republic, and its subjects, though he has probably not borrowed it from Thucydides.

"La république de Venise étoit formée, en quelque sorte, de trois nations: les Venitiens, les peuples de terre firme, et les Levantins. Les habitans de Venise même et des lagunes se regardoient comme le *peuple-roi*; les prérogatives de la souveraineté n'appartenoient, il est vrai, qu'à un corps de noblesse peu considérable, formé au sein de cette nombreuse population; mais tous les Venitiens se sentoient encore membres de la république, et dominateurs dans les pays qu'ils avoient conquis."—Histoire des Rép. Ital. ch. 80. (tom. x. p. 261.)

* By a subordinate government, I mean, (as I have stated in the text,) a government not being sovereign, but having the complete organization which characterizes the sovereign government of an independent political society; in other words, possessing all the political powers which a government can possess, and all the institutions requisite for the exercise of them. A body of public functionaries may preside for certain purposes over a district (as a county, department, municipality, or borough) which is immediately subject to a sovereign government; but inasmuch as the powers of such a body only extend over certain classes of subjects, it cannot be said, with propriety, to form the subordinate government of the district.

government in this: that it is completely organized, and possesses all the institutions requisite for the performance of the several functions which are proper to a government. It differs from a sovereign government in this; that it is subordinate to, or, in other words, in the habit of obeying, the government of another political society.

A subordinate government resembles a body of functionaries exercising certain powers of government over a district which is immediately subject to a sovereign government, (such as a county, department, municipality, or borough,) in being subordinate to a sovereign government. It differs from such a body of functionaries, in possessing the full complement of the powers and institutions requisite for governing a political community. For example; the town-council of an English borough, with the other borough officers, though they exercise many of the functions of government in the borough, do not exercise them all; and it would be necessary for the borough, if the interference of the supreme government were withdrawn from it, to create new public departments, before it would possess a completely organized government, capable of presiding over an independent political society.

Several dependencies may be subject to the same supreme government; or, in other words, may be dependent on the same dominant community.

The district subject to a subordinate government is necessarily less extensive than the entire territory subject to the supreme government.

Empire defined.

The entire territory subject to a supreme government possessing several dependencies (that is to say, a territory formed of a dominant country together with its dependencies), is sometimes styled an *empire;* as when we speak of the British empire. Agreeably with this acceptation of the word empire, the supreme government of a nation, considered with reference to its dependencies, is called the *imperial government*, and the English Parliament is called the *imperial parliament*, as distinguished from the provincial parliament of a dependency.*

* Burke, in the following passage, considers an empire to be a system of communities, one supreme, the others subordinate, and distinguishes it from the dominant nation, which is a single community. "I look on the imperial rights of Great Britain, and the privileges which the colonists ought to enjoy under these rights, to be just the most reconcilelabe things in the world. The parliament of Great Britain sits at the head of her extensive empire in two capacities: one as the local legislature of this island, providing for all things at home, immediately, and by no other instrument than the executive power. The other, and I think, her nobler capacity, is what I call her imperial character; in which, as from the throne of heaven, she superintends all the several inferior legislatures, and guides and controls them all without annihilating any. As all these provincial legislatures are only co-ordinate to each other, they ought all to be subordinate to her." After some other remarks, he adds: "Such, Sir, is my idea of the constitution of the British empire, as distinguished from the constitution of Britain." Speech on American Taxation. Works, vol. ii. p. 435—7.

Again, he says, in his speech at the conclusion of the poll at Bristol: "We are now members for a rich commercial city; this city, however, is but a part of a rich commercial *nation*, the interests of which are various, multiform, and intricate. We are members for that great nation, which, however, is itself but part of a great *empire*, extended by our virtue and by our fortune to the furthest limits of the east or the west."—Works, vol. iii. p. 21.

The word *reich* has a similar acceptation in German. One of the meanings attributed to it by Adelung, in v. is, "Der ganze Umfang aller einem gekrönten Oberhaupte unterworfenen Pro-

Nature of the political powers delegated to a subordinate government.

Since a dependency is characterized by its being immediately subject to a subordinate government, and since a subordinate government is characterized by the completeness of its delegated powers, and their applicability to every purpose of government, we proceed to consider in detail the nature and extent of the powers which are delegated to a subordinate government.

1. General power of subordinate legislation.

The most important power delegated to a subordinate government is a general power of subordinate legislation, as distinguished from a special power of subordinate legislation.

The difference between a general and a special power of subordinate legislation may be described in the following manner.

A *general* power of subordinate legislation is necessarily limited by the conditions* to which all delegated or subordinate political power is liable; but it is unlimited as to the subjects to which it may be applied within the assigned

vinzen." The Greek work ἀρχὴ, when used with reference to dependencies, has been translated *empire*. See Mr. Clinton's Fasti Hellenici, vol. ii. App. 6 and 7. Compare Wachsmuth, Hellenische Alterthumskunde, i. 2. p. 69, "Zur rechten Erkenntniss desselben bedarf es einer Nachweisung der Stufen, durch welche die Athenische Seeherrschaft zu der Höhe aufstieg, wo eine unbestrittene Gewalthaberschaft über Inseln und Küsten, *gleich einem Athenischen Reiche, zum Unterschiede von dem Athenischen Staate*, bestand."

The Latin word *imperium* commonly signifies the dominion itself, and not the people or territories subject to the dominion: it bears, however, the latter meaning in the following passage of Tacitus, where Galba says to Piso, "Si *immensum imperii corpus* stare ac librari sine rectore posset, dignus eram a quo respublica inciperet."—Hist. i. 16.

* See those conditions stated above, p. 60, 61.

territory. Accordingly, where a general power of subordinate legislation has been delegated, the subordinate legislature can make a law upon any subject, provided that the law which it makes be not inconsistent with a law established by the supreme legislature in relation to the same subject, and provided that the subordinate legislature be not prohibited by a law of the supreme legislature from legislating on such subject. For example, when a Roman governor was sent into a province, he could make any law in the province which was not inconsistent with the rules established by Rome for the government of the province upon its first reduction, or with some law, binding the province, subsequently made by the supreme legislature. Again, the subordinate government of an English dependency (consisting of the crown and a body of persons in the dependency) is competent to make any law which is not inconsistent with some act of parliament, or some recognized rule of common (or unwritten) law, binding the dependency.

But where a *special* power of subordinate legislation has been delegated, the subordinate legislature can only make a law concerning the subject or subjects upon which it is, either expressly, or by necessary implication, empowered to legislate. For example, if Commissioners of Revenue are invested with a power of regulating the mode in which a tax is to be levied; if a municipal body is invested with powers of regulating the paving, lighting, and watching a town; if a judge is empowered to esta-

blish rules of procedure for his own court, these functionaries acquire no power of legislation which is not expressly or implicitly conferred upon them by the terms of the delegation. A subordinate government possesses a power of legislating on every subject which is not, tacitly or expressly, excepted from its powers. A special subordinate legislator possesses no legislative power which has not been expressly, or by clear implication, conferred upon him. Consequently, in the latter case the presumption of law is against, in the former case it is in favour of, the existence of any given legislative power.*

Hence, the legislative power of a subordinate government is subject only to one legal limitation; viz., that its laws must not be inconsistent with any law of the supreme government binding the dependency. The legislative power of a subordinate legislator, having a special power of subordinate legislation, is subject to two legal limitations; viz. 1. Its

* The distinction between general and special political powers is pointed out by Hobbes: "Of public ministers, some have charge committed to them of a *general* administration, either of the whole dominion, or of a part thereof; of the whole, as to a protector or regent may be committed by the predecessor of an infant king, during his minority, the whole administration of his kingdom . . . of a part or province, as when either a monarch or a sovereign assembly shall give the general charge thereof to a governor, lieutenant, præfect, or viceroy . . . Others have *special* administration; that is to say, charges of some special business, either at home or abroad;" and he then proceeds to enumerate various sorts of executive functionaries, as those having authority concerning the public treasure, those having authority concerning the militia, those having authority to teach, those to whom jurisdiction is given, and the like.—Leviathan, Part II. ch. 23.

laws must not be inconsistent with a law of the supreme government. 2. It must only legislate on the subject or subjects on which it has been expressly, or by necessary implication, empowered to legislate.

A subordinate government may be restrained by the supreme government from legislating on a given subject. But in this case the restriction would be made by specifically excepting the subject from the unlimited number of subjects to which the power of legislation possessed by the subordinate government is otherwise applicable. The same remark likewise extends to restraints placed on any other of the powers of a subordinate government, such as its executive powers.

The supreme government may, however, delegate a general power of subordinate legislation to a functionary or body of functionaries, without creating a subordinate government by the delegation. In other words, a government may confer a power of subordinate legislation, which may be exercised over an unlimited number of subjects, without conferring at the same time general political powers, or powers which can be applied to every purpose of government. For example, in every civilized country the judges exercise *indirectly* a general power of subordinate legislation, with the approbation of the supreme legislature; in other words, they legislate indirectly on an indefinite or unlimited number of subjects. Moreover, judges may exercise *directly* a general power of subordinate legislation; thus the Roman prætor legislated directly, in his judicial capacity,

by his edict.* But a court having a power of legislating directly, after the manner of the prætorian edict, would be far from possessing all the powers of a subordinate government. For in the first place, a court thus constituted would want the administrative powers which a subordinate government possesses: such as the power of disposing of the armed force, or the general power of levying taxes. Moreover, since all its legislative powers would be the consequence of its judicial powers, its powers of subordinate legislation could scarcely have, in practice, as extensive a range as the powers of subordinate legislation possessed by a subordinate government; thus, it could scarcely make laws for the government of the army and navy.

It follows from the preceding remarks, that the powers of legislation delegated to a subordinate government enable it to make any law which is not inconsistent with a law of the supreme government binding the dependency. It is often difficult in practice to determine which are the laws of a supreme government that bind a dependency. Some observations with reference to the English practice on this point will be made lower down.†

It likewise follows that a legislative act affecting a dependency may proceed immediately either from the supreme government, or from the subordinate government; or that the subordinate government may issue the act, but in obedience to instructions from the supreme government.

* See above, p. 52, 53. † Below, Ch. V.

Moreover, a supreme government may make a law affecting a dependency, defeasible or suspendible at the pleasure of the subordinate government of the dependency; or it may annex to the law any condition to be fulfilled by the subordinate government.

2. Power of issuing arbitrary commands.

In addition to the power of making laws, a general delegation of political powers confers on the subordinate government a power of issuing an *arbitrary* command (that is, a special command not founded on a pre-existing law*), provided that such arbitrary command be not inconsistent with some law of the supreme government binding the dependency.

It has been remarked in the Preliminary Inquiry, that an arbitrary command, though it be not (like an executive command or act) founded upon an existing law, and though it be not itself a law, yet is often invested with the legislative forms; † and this remark applies equally to arbitrary commands or *privilegia* issued by supreme, and to those issued by subordinate governments.‡

3. Power of executing the laws.

Moreover, besides the powers of making laws and of issuing arbitrary commands, a general delegation of political powers confers on a subordinate government a power of carrying into effect, by ex-

* Above, p. 15—17.

† Above, p. 45, 46.

‡ The power of a subordinate government to make a penal *privilegium* was much discussed in the summer of 1838, with reference to Lord Durham's ordinance for transporting certain Canadians to Bermuda. See the question well stated and argued in the Law Magazine, vol. xx. p. 384—390.

ecutive commands or acts, all the laws in force in its territory. It has been explained above, that the legislative power implies the power of determining the manner in which the executive power shall be delegated;* and thus a general power of subordinate legislation naturally involves a power of creating an executive machinery for the use of the dependency, and of remodelling it at pleasure.

It has been shown above, that a supreme government always delegates its executive powers to certain subordinate functionaries;† and that it also delegates to these functionaries some special powers of subordinate legislation, more or less extensive or important.‡ In this respect there is no difference between a supreme and a subordinate government. The delegation of powers to executive officers is precisely similar in both cases.

4. Inquisitorial power.

A general delegation of political powers, likewise, confers on a subordinate government *inquisitorial* powers, not only for executive, but also for legislative purposes.

From the preceding enumeration of the powers belonging to a subordinate government, it results that a subordinate government possesses all the four sorts of powers which belong to a supreme government,§ and consequently that it possesses powers applicable to every purpose to which the powers of a government can be applied.

Comparative import-

The delegation of a general power of subordinate

* Above, p. 65.
† Above, p. 51.
‡ Above, p. 66.
§ See above, p. 6—46.

legislation to the government of a dependency is more important than the delegation of a special power of subordinate legislation to a municipal or other executive body, not only on account of the greater number of subjects to which the general power is applicable, but also on account of the greater frequency of the occasions for its exercise.*

Importance of subordinate legislation of a subordinate government and subordinate legislation of executive functionaries.

A subordinate legislature cannot, as has been already remarked, make a law inconsistent with a law of the supreme legislature affecting the dependency; still less can it repeal or alter any such law. Accordingly, if the supreme government had legislated extensively for the dependency, there would be little scope for the exercise of the powers of subordinate legislation possessed by its own peculiar government, however extensive those powers might be. But, in general, on account of the difference between the circumstances of the two countries, or the remoteness of the dependency, or its recent acquisition by the dominant country, or some other cause, the supreme government has scarcely legislated at all for its internal regulation. Therefore, a wide field for the exercise of its legislative powers is in general open to the subordinate government. For example, few acts of parliament relate to the internal government of any English dependency, excepting so far as they determine the structure or powers of its subordinate government; as the late Act renewing the

* On the comparative quantity and character of the laws made by the supreme and subordinate legislatures of a country, see the remarks above, p. 57, 58.

charter of the East India Company, and the acts relating to the constitution of Canada. The acts of parliament applicable to the English dependencies chiefly regulate their commercial or other relations with England, or with one another, or with foreign countries; as the Navigation Act, and the acts relating to the transportation of convicts, and the slave trade.

Separateness of a subordinate government.

From the generality of the powers of a subordinate government, and the completeness of its administrative and judicial machinery, it likewise follows that a dependency is as little incorporated with the dominant community, and its government is as distinct, as is consistent with its being an integral part of the same independent political society.

Accordingly, a dependency is not understood to be included in a commercial treaty with the dominant country, if the dominant country is alone named.* A treaty of peace or declaration of war is, however, understood to include dependencies without their being named; and a dominant country is as responsible to other independent states for the conduct of the inhabitants of its dependencies as of any other part of its dominions.

It may be here remembered, with reference to the separateness of a dependency, that a circumstance very characteristic of a dependency is, that

* See Stokes, Constitution of the British Colonies, p. 13. In like manner, the Act 12 Ch. II., c. 4, s. 1, which granted to the king a subsidy of five per cent. on all merchandise exported from or imported into the realm of England, or "any of His Majesty's dominions to the same belonging," was held not to include the colonies. See Bancroft's History of the United States, vol. ii. p. 41. Compare Montesquieu, Esprit des Lois, l. xxi. c. 21.

the revenue and expenditure of its subordinate government constitute a separate account; and that no part of its public revenue and expenditure is mixed with the public accounts of the dominant country. A district immediately subject to the supreme government (such as a county, department, borough, or parish) may keep a separate account of certain public taxes collected and disbursed by it; but other taxes are collected in the district by the agents of the supreme government, the proceeds of which it expends and accounts for. It makes no difference as to the separateness of the public accounts of a subordinate government, whether the dependency does or does not pay a tribute to the supreme government.

Power of a dependency to make war.

The delegation of political powers to the governments of dependencies is so extensive, that there is no political power which has not been exercised by some subordinate government. In general, however, the power of making war of their own authority is withheld from the subordinate governments of the dependencies of civilized states; but it has often been exercised by the oriental satraps and pachas, and a power of self-defence against invasion must necessarily be allowed to the governments of all distant dependencies, such as the American, Indian, and Australian dependencies of England.*

* Volney considers the wars between the pachas, or governors of provinces, in the Turkish empire, as marks of their virtual independence. "Il arrive quelquefois (he says) que les pachas, *sultans dans leurs provinces*, ont entre eux des haines personnelles;

How far the payment of a tribute is a mark of political dependence.

The payment of a *tribute** by one political community to another is a mark that the tributary community is dependent on the other; provided that, in case the tribute is withheld, the payment of it can be exacted by the community which expects to receive it. But the payment of a tribute is not universally a mark of dependence; for the payment may be made voluntarily, and not under the fear of its exaction by force. For example, when the kings of England paid the proceeds of the Peter's pence to the Pope, this payment did not render England a dependency of the State of the Church. In like manner, one community may buy off the hostility of another, by the payment of a tribute, and yet retain its political independence. Thus when Sweden, Denmark, and Portugal made regular payments to Algiers, in order to insure their ships against the piracies of the Algerines, these countries did not become dependencies of the Algerine government. A payment of the latter sort may be compared to the *black-mail* paid by the landowners in the Scotch lowlands to the highland marauders, as the price of the

pour les satisfaire, ils se prévalent de leur pouvoir, et ils se font mutuellement des guerres sourdes ou déclarées, dont les effets ruineux tombent toujours sur les sujets du sultan."—Volney, Voyage en Egypte et en Syrie tom. ii. p. 225. It is manifest that if different parts of the same empire have a habit of making war against one another, they do not habitually obey a common superior; but occasional instances of such wars, in so ill-compacted and ill-regulated a system as that of an Oriental empire, would not be a proof of independence.

* By a *tribute* I understand a payment made periodically by one government to another government, not as a compensation for a wrong or in discharge of a debt.

security of their cattle; which payment had not the effect of being an acknowledgment to those who received the money that they had any right in the soil.*

Distribution of the persons composing a subordinate government.

Having examined the nature of the delegation of political powers to a subordinate government, I proceed to consider the manner in which the persons composing such a government may be distributed.

A subordinate government never consists exclusively of persons resident in the dominant country; since the purpose for which a subordinate government is created, is to enable the dependency to be governed by persons resident on the spot. If the dependency could be governed by the supreme government directly, or by a subordinate government consisting of persons resident in the dominant country, there would be no need of creating the subordinate government, or of governing the country as a dependency. Every government must have a power of communicating rapidly with its subjects; and, consequently, a territory which lies at a considerable distance from the seat of the supreme government must be placed under a subordinate government, and be governed as a dependency. It will be shown lower down† that the idea of *distance*, with reference to the government of a territory, is relative, and depends on the political skill, and the

* So the obligation to pay a tribute to Athens did not, when the payment was purely voluntary, import that the state was an Athenian dependency.—See Boeckh's Public Economy of Athens, b. 3. c. 15. (vol. ii. p. 147. English translation.) Wachsmuth, Hellenische Alterthumskunde, i. 2, p. 80.

† Below, Ch. IV.

facilities of communication with the territory in question, which the supreme government possesses.

A subordinate government may, therefore, either consist exclusively of persons resident in the dependency, or it may consist partly of persons resident in the dominant country and partly of persons resident in the dependency.

The former is the more simple system, and it was followed in the dependencies of the ancient republics, as in the subject states of Athens and in the Roman provinces. It has also been adopted in the inartificial monarchies of Asia, both in ancient and modern times.

The more complex system of dividing the subordinate government into two portions, one of which is in the dominant country, the other in the dependency, has been adopted for the government of the dependencies of modern European states, as Spain, France, Holland, and England. According to the modern English phraseology, that portion of the subordinate government which consists of persons resident in the dominant country is usually called the *home government;* and that portion of it which consists of persons resident in the dependency is usually called the *local government.*

Where the subordinate government is thus divided, it is sometimes a complex whole, in which the consent of both portions is requisite to the making of a law. Sometimes the portion in the dependency is completely subordinate to the portion in the dominant country, and the latter may legis-

late without the consent of the former. In this case, a sub-delegation may be considered as taking place, as in an English crown colony: and the viceroys of the Spanish colonies seem to have formerly occupied a similar position with respect to the council of the Indies. Sometimes the portion in the dependency can legislate without the consent of the portion in the dominant country, as appears to have formerly been the case with the English colonies in America.

It may be observed, that the members of the subordinate government, resident in the dominant country, are usually in close connexion with the supreme government, and are often members of it; and that since, in general, the supreme government legislates rarely concerning the internal affairs of a dependency, the members of the subordinate government, who are resident in the dominant country, form the chief link between the dominant country and the dependency.

When the powers of the subordinate government are divided between persons resident in the dominant country, and persons resident in the dependency, the share in the power of subordinate legislation, which is exercised by persons resident in the dependency, may either be conferred exclusively on a person or persons appointed by the home government, or it may be conferred on the nominees of the home government, conjointly with a body of persons chosen by the inhabitants of the dependency.

On the nature and extent of the powers of a

body so elected in a dependency, possessing a share of the power of subordinate legislation, and on the relation of such a body to the supreme government, some further remarks will be made in a subsequent part of this Essay.*

The portion of a subordinate government which consists of persons resident in the dependency, may be principally composed either of natives of the dominant country or of natives of the dependency itself. We shall hereafter point out that the difference between the two latter modes of government is of great importance, although the form of the government is the same.† It may be added, that the headship of the subordinate government in the dependency is almost invariably entrusted to a native of the dominant country.

Number of the persons comprising the subordinate government.

The dependencies of a monarchy have always been governed by a single governor, who has united in himself all the powers delegated to the subordinate government. This has been the case with the satraps, pachas, and other governors under the Oriental monarchies, and with the Spanish viceroys of the Indies.‡

A dependency of a state having a popular government has sometimes been governed by a single person, and sometimes by a body composed of several persons. Thus in the Athenian dependencies the subordinate government was conducted by a

* Below, Ch. IX. § 2.
† Below, Ch. IX. § 2.
‡ See note (F.) at the end of the volume.

democratic body; the subordinate government of the Roman municipia was conducted by a body of councillors, whilst the Roman provinces were generally subject to a single governor; the Venetian dependencies were placed under a government having an organization similar to that of the dominant republic; in the British dependencies the legislative power of the governor is almost always checked by a body of persons who are either appointed by the Crown or elected by the inhabitants of the dependency.

Examination of two questions. 1. Can a dependency create a dependency?

There are some other questions connected with the government of a dependency, which may be conveniently examined in this place.

It may be asked, whether there can be a dependency of a dependency? and whether a subordinate government can create a subordinate government?

There is nothing in a power of this sort repugnant to the idea of a dependency. Provided such a delegation be not prohibited by the laws of the supreme government, a subordinate government may make a general delegation of its powers with respect to a portion of the territory subject to it. But it is generally considered out of the province of a subordinate government to create another subordinate government; and there is a manifest inconvenience in the existence of a double row of dependencies, since a law would have to pass through two local governments before it came under the revision of the home government.

Some of the English dependencies are said to

have dependencies of their own, as Jamaica and Malta. These are small islands near to Jamaica and Malta, which are comprehended in the same subordinate government. They would, perhaps, be more correctly styled "appendages" or "appurtenances" than "dependencies."*

2. Whether one community is dependent on another, when their governments have a common head?

It may further be asked whether one political community is dependent on another, when the head of the government of the one community is also head of the government of the other.

If the head of one political community becomes the head of another such community, and he possesses the entire sovereignty (or is monarch) in both communities, the two communities become integral parts of the same empire; and either they may both be governed directly by the monarch, or one of them may be placed by him under a subordinate government, and be governed as a dependency. Thus, the Netherlands, the kingdom of the two Sicilies, and the duchy of Milan, were integral parts of the Spanish empire in the sixteenth century; and were governed as dependencies of Spain. If the distance would have permitted, these territories might have been governed directly by the supreme government, in the same manner that the several independent kingdoms of the Spanish peninsula became directly subject to one monarch.

If the head of the government in the two com-

* In like manner, the French dependencies, Guadaloupe and Senegal, are said to have dependencies of their own: Raynal, vol. iv. p. 182. Notices Statistiques sur les Colonies Françaises, Part. III. p. 143.

munities does not possess the entire sovereignty (or is not monarch) in both, each community remains independent of the other. In order that two communities should be united under one sovereign government, it is necessary that the same government should be sovereign over both; which is not the case if the only political connexion subsisting between them is, that a person who is member of the sovereign body in one community is also member of the sovereign body in the other; or, that a person who is member of the sovereign body in one community possesses the entire sovereignty (or is monarch) in the other. Thus, the late king of England was a member of the sovereign body in the British empire, and was likewise a member of the sovereign body in the kingdom of Hanover. But Great Britain and Hanover were not on this account constituent parts of the same political community; nor was either country a dependency of the other. So after the union of the crowns of England and Scotland, Scotland was still an independent community, inasmuch as the king and the English parliament could not legislate in it: and it was not till the union of 1707 that England and Scotland became one political community, and subject to a common government.* By this union, Scotland was rendered immediately subject to the supreme government of Great Britain; and therefore Scotland never was

* Hence the Scotch Union of 1707 was styled an *incorporating union*; see Laing's History of Scotland, vol. iv. p. 337. The same term was subsequently applied to the Irish Union of 1800.

an English dependency. The English parliament, however, exercised a power of legislation over Ireland until 1782; so that, before that time, Ireland was an English dependency, and its houses of parliament formed, together with the English crown, a subordinate government. But in 1782, the British Parliament surrendered its legislative power over Ireland. In consequence of this surrender of power, Ireland became an independent kingdom, whose king was also king of Great Britain; and the Irish houses of parliament, instead of forming part of a subordinate government, became a part of a sovereign government. The independence of Ireland lasted until 1800; and the Union of 1800 produced the same change in the political relations of Great Britain and Ireland, as the Union of 1707 had produced in the political relations of England and Scotland.*

The subsisting relation between the governments of Hungary and Austria is similar to that which subsisted between the governments of England and Scotland in the seventeenth century, and to that which lately subsisted between the governments of Great Britain and Hanover; excepting that the Emperor of Austria possesses the entire sovereignty in the Austrian dominions, and is only a member of the sovereign body in Hungary. The princes of the house of Austria have attempted to exercise the entire sovereign power within the territory of Hungary, and to treat Hungary as an Austrian depen-

* See below, Ch. II. § 2.

dency; but this pretension has been resisted by the Hungarian diet, and Hungary must now be considered as an independent kingdom, whose king is also Emperor of Austria.

Some writers have maintained that the English colonies in America and the West Indies are connected with England by a political relation similar to that just described. They have asserted that the English parliament is not supreme in any of these colonies; and that a law can only be made therein by a body composed of the English king and the local legislature of the colony. According to this view, the colonial local legislature is not subordinate to, but co-ordinate with, the English houses of parliament; and the local legislature occupies in the colony the same position with respect to the crown, which the houses of parliament occupy with respect to it in England. It follows, of course, from this view, that the English colonies in which this system of government obtains are not dependencies of England.*

3. What is the supreme government of a settlement established on the territory of another independent state?

There is likewise a question respecting the seat of the sovereign power, in one species of dependencies, which may be here examined.

It sometimes happens that an independent state establishes, on the territory of another independent state, a factory, or other settlement for purposes of trade or industry; and prevails upon the supreme government of the state to allow to the inhabitants of such factory or settlement, certain exemptions

* See note (G.) at the end of the volume.

from the laws of the place, and the jurisdiction of the native courts. Having secured these exemptions for the precinct assigned to such settlement, the supreme government of the other state proceeds to organize for it a subordinate government, and even to exercise over it a control resembling that which such supreme government might exercise over one of its own proper dependencies.

Instances of this sort of settlement are afforded by the factories of the Venetians and Genoese in Constantinople under the Greek, and subsequently under the Ottoman Empire; by the factories of the Portuguese, Dutch, French, and English in Hindostan; and by the factories of the Portuguese and English at Macao and Canton. The British settlement of Honduras seems to have been originally established on Spanish soil by the consent of the Spanish Government; at present, however, it is absolutely dependent upon England.

Now, in each of the cases just stated, a subordinate government can be plainly discerned, which, though it may not possess a very complete organization, nevertheless suffices for the wants of the small community over which it presides. But it is less easy to determine what is the supreme government to which each of these local governments is subordinate; in other words, what is the supreme government upon which the dependency is dependent.

Strictly speaking, the subordinate government of such a settlement is subject to the supreme govern-

ment of the country in which the settlement is situate. The supreme government of the country never surrenders its sovereignty over the territory occupied by the settlement; and it can, at any time, resume the powers which it allows to be exercised by the other government. But, so long as the treaty or other agreement between the two supreme governments is observed by the supreme government of the country, the subordinate government of the settlement is in practice influenced by the directions issued to it from the supreme government of the country which has established it. Thus, so long as the Chinese Government permitted the existence of an English factory at Canton, the English of the factory claimed and enjoyed certain exemptions from the jurisdiction of the Chinese Courts, and the English Parliament even made laws by which it affected to bind the inhabitants of the factory. But, nevertheless, the sovereignty of the Chinese Government over the English factory at Canton never could have been disputed by the English Government; and the power which the English Parliament exercised over it could only have been considered as exercised with the consent, and by the sufferance of the supreme Chinese Government.

CHAPTER II.

Examples of Dependencies.

HAVING given in the preceding chapter a general definition of a dependency, I propose, before I proceed to a further illustration of the ideas involved in this word, to collect some examples of dependencies, for the purpose of exhibiting the principal forms under which the relation of a dominant and a dependent community has existed in different ages and countries.

§ 1. Dependencies of the Oriental Monarchies, and of the Ancient Republics.

The system of governing by means of dependencies existed to a great extent in the ancient world; indeed, it was one of the main characteristics of the ancient governments, both monarchical and republican.

Dependencies of oriental monarchies.

The ancient monarchies of Asia were generally aggregates of nations which had once been independent, but had been reduced by conquest to dependence on a common superior. The obvious and rude contrivance for maintaining this dependence was for the ruler of the conquering tribe to place a governor in each subject community, who collected a revenue from the inhabitants, and having first defrayed from it the expenses of his own government, paid over the surplus, as a tribute, to his

chief. This appears to have been the character of the Persian Empire and its satrapies, as described by Herodotus;* and such, with only slight differences, has been the character of the Oriental governments at all times.

"The plan," says Mr. Mill, "according to which the power of the sovereign was exercised in the government of Hindostan, resembled that which has almost universally prevailed in the monarchies of Asia, and was a contrivance extremely simple and rude. In the more skilful governments of Europe, officers are appointed for the discharge of particular duties in the different provinces of the empire; some for the decision of causes, some for the control of violence, some for collecting the contingents of the subjects, for the expense of the state; while the powers of all centre immediately in the head of the government, and altogether act as connected and subordinate wheels in one complicated and artful machine. Among the less instructed and less civilized inhabitants of Asia, no other plan has ever occurred to the monarch, for the administration of his dominions, than simply to divide his own authority and power into pieces or fragments, as numerous as the

* See Herod. III. 89. sqq. Herodotus III. 97, states that the territory of Persis, the district immediately subject to the king, was free from tribute, but that the inhabitants paid him gifts, or *benevolences*. Compare Heeren's Ideen, vol. i. Part I., on the internal constitution of the Persian Empire; who proves satisfactorily that the amounts of the tributes, which are stated by Herodotus, do not comprehend all that was paid by the provinces to the satraps, but only the sums which were payable by the satraps to the royal treasury.—See pp. 477—82; 496. Compare Xenoph. Cyrop. viii. 6.

provinces into which it was deemed convenient to distribute the empire. To each of the provinces a vice-gerent was dispatched, who carried with him the undivided authority and jurisdiction of his master. Whatever powers the sovereign exercised over the whole kingdom, the vice-gerent exercised in the province allotted to him; and the same plan which the sovereign adopted for the government of the whole, was exactly followed by the vice-gerent in the government of a part. If the province committed to his sway was too extensive for his personal inspection and control, he sub-divided it into parts, and assigned a governor to each, whom he entrusted with the same absolute powers in his district as he himself possessed in the administration of the greater department. Even this inferior deputy often divided his authority, in the same manner, among the governors whom he appointed, of the townships or villages under his control. Every one of those rulers, whether the sphere of his command was narrow or extensive, was absolute within it, and possessed the whole power of the sovereign, to levy taxes, to raise and command troops, and to decide upon the lives and property of the subjects. . . . The expense of the government of each vice-gerent was defrayed out of the taxes which he levied, and the surplus was transmitted to the superior lord, to whom he was immediately responsible. From him it was again conveyed to the governor above him, till it reached, at last, the royal treasury."*

* History of British India, vol. i. pp. 176—8.

The existing mode of government in the Ottoman empire agrees almost exactly with that described by Mr. Mill in the preceding passage. The whole Ottoman empire, with the exception of Constantinople and its district, is divided into provinces, and a governor, commonly styled pacha, is placed by the sultan at the head of each. This appointment confers on the pacha the entire subordinate government of his province. The only power which the sultan does not delegate to his governors, is the administration of civil justice, which (as being in a Mahommedan country rather a religious than a political business) is withdrawn from the military pachas, and is made to depend upon an officer in Constantinople.*

* "Dans cette série d'emplois, l'objet de la commission étant toujours le même, les moyens d'exécution ne changent pas de nature. Ainsi le pouvoir étant, dans le premier moteur, absolu et arbitraire, il se transmet arbitraire et absolu à tous ses agents. Chacun d'eux est l'image de son commettant. C'est toujours le sultan qui commande sous les noms divers de pacha, de motsallam, de quâiemmaqam, d'aga; et il n'y a pas jusqu'au délibache qui ne le représente." —Volney, Voyage en Egypte et en Syrie, tom. ii. p. 220.

"En chaque gouvernement, le pacha étant l'image du sultan, il est comme lui despote absolu; il réunit tous les pouvoirs en sa personne; il est chef et du militaire, et des finances, et de la police, et de la justice criminelle. Il a droit de vie et de mort; il peut faire à son gré la paix et la guerre; en un mot, il peut tout. Le but principal de tant d'autorité, est de percevoir le tribut, c'est-à-dire de faire passer le revenu au grand propriétaire, à ce maître qui a conquis et qui possède la terre par le droit de son épouvantable lance."—Ib. p. 222.

"A titre d'image du sultan, le pacha est chef de toute la police de son gouvernement; et sous ce titre, il faut comprendre aussi la justice criminelle. Il a le droit le plus absolu de vie et de mort; il l'exerce sans formalité, sans appel."—Ib. p. 228.

"L'administration de la justice contentieuse est le seul article que les sultans aient soustrait au pouvoir exclusif des pachas, soit parce-

The partition of a large empire into dependencies is the simplest expedient for governing it, and would naturally be resorted to in any barbarous or semi-barbarous country. Accordingly, we find it in ancient Mexico,* as well as in most of the Asiatic monarchies both of ancient and modern times.

It is to be observed, that in the Asiatic monarchies the subordinate government was modelled after the supreme government, and was almost always delegated to a single officer, who administered his province nearly upon the same principles as those which guided the supreme ruler in the government of the empire generally, or of that part of it immediately subject to his dominion. There are some

qu'ils ont senti l'énormité des abus qui en résulteraient, soit parce-qu'ils ont connu qu'elle exigeait un temps et des connaissances que leurs lieutenants n'auraient pas; ils y ont préposé d'autres officiers qui, par une sage disposition, sont indépendants du pacha.... Tous les magistrats de l'empire appelés *quâdis*, c'est-à-dire, juges, dépendent d'un chef principal qui réside à Constantinople... Ce grand *quâdi* nomme les juges des villes capitales, telles qu'Alep, Damas, Jérusalem, etc. Ces juges, à leur tour, en nomment d'autres dans les lieux de leurs dépendances."—Ibid. p. 231—2. Compare D'Ohsson, Tableau de l'Empire Ottoman, tom. vii. p. 283.

The decisions of the *cadis*, or civil judges, are, according to Volney, ib. p. 233—4, sometimes founded on unwritten customs or decisions of doctors, but in most cases on the Koran. The *religious* character of the civil jurisprudence of the Ottomans is probably the reason why the civil judges are independent of the pachas.

The delegation to the pachas was formerly so complete, that they could even use the sultan's signature, and issue laws in his name. "Les gouverneurs faisaient autrefois usage du chiffre du sultan, parce qu'ils avaient le droit de rendre des ordonnances au nom du souverain; mais cette prérogative ayant donné lieu à des abus, fut supprimée sous le règne d'Ahmed III."—D'Ohsson, tom. vii. p. 284.

* Robertson's Hist. of America, b. 7. (vol. vii. p. 260). The Thracian Empire of Sitalces, described by Thucyd. II. 95—8, seems likewise to have been a loose aggregate of tributary dependencies.

traces of the military and fiscal powers having been exercised by different persons in the provinces of the ancient Persian monarchy; but in general, both in that and other Oriental monarchies the satrap or provincial governor was both military commander and collector of the tribute.* It was his ambition to imitate the state of the monarch his master, and to keep a petty court; † and the monarch was little inclined, even if he was able, to check the excesses of his viceroy, provided that the latter paid his appointed tribute at the appointed times.

It must not be inferred from Mr. Mill's account of the dependencies of an Oriental monarchy, (which has been cited above,) that these dependencies were different in kind from the dependencies of a republic or free state. In every dependency, the delegation of political powers to the subordinate government is (as we have already explained) nearly unlimited. The government of every dependency is capable of legislating on nearly all subjects, and of executing all laws in force within its territory; and if the government is entrusted to one man, all these powers are necessarily united in his person. The principal differences between the Oriental and European systems of government, with respect to dependencies, appear to be the following:—1. In the Oriental dependencies the subordinate government is almost invariably entrusted to a single

* Heeren, Id. p. 490—2.

† Heeren, p. 495. On the magnificence of the Turkish pachas, and the expensiveness of their little courts, see D'Ohsson, Tableau de l'Empire Ottoman, tom. vii. p. 287.

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person (styled a satrap, pacha, &c.); whereas, in the dependencies of European states, the subordinate government is sometimes more or less popular in its structure; in other words, it consists of a body of persons more or less numerous. 2. In the Oriental dependencies, the whole empire, with the exception of the capital city and a small district attached to it, is parcelled out into dependencies; whereas, in the modern European states, all the territories which do not lie at a great distance from the central power are immediately subject to the supreme government. 3. In the Oriental dependencies, the control of the supreme government over the subordinate government of the dependency is feeble and irregular; whereas, the European states usually exercise a more vigorous control over the local governments of their dependencies.

Dependencies of ancient republics.

The powerful *republics* of antiquity likewise kept a considerable number of communities in subjection, which they had reduced either by conquest, or the threat of conquest. Each of these communities had a subordinate government, and (unless it was prevented by poverty) paid a tribute, in money or in kind, or in military or naval supplies, to the dominant state. The subordinate government of these dependent communities was generally presided over by a military or civil officer who represented the supreme government.

Dependencies of Athens.

A remarkable example of a system of dependencies under a Greek republic is afforded by the subject allies of Athens in the period of her ascendancy.

After the defeat of the great Persian expedition against Greece, and the secession of the Spartans from the command of the allied Greek forces, the Athenians gradually reduced their allies in the islands and coasts of the Ægean sea to a state of dependence, and converted the voluntary contributions which the allies had made to the treasury at Delos for the furtherance of the common cause, into a tribute, which was remitted to Athens, and for the expenditure of which the Athenians rendered no account.* These subject communities retained their separate governments, (which were organized on democratic principles,†) and administered generally their own internal affairs;‡ but they were under the control, either permanent or occasional, of Athenian inspectors or governors, or military commanders.§ Moreover, the courts of the dependency were deprived of their jurisdiction in all important cases, which could only be tried by the Athenian tribunals.‖ In some instances, the Athenians seized a portion of the lands of a subject state, and divided them among certain of their citizens. Citizens who obtained

* See the copious and detailed account of the subject allies of Athens in Boeckh, Public Economy of Athens, b. iii. c. 15, 16, 17. (vol. ii. pp. 132—68. Engl. transl.) Compare Wachsmuth, Hellen. Alt. i. 2. pp. 69—83, and Thirlwall's History of Greece, ch. 18.

† Aristophanes boasts of having exposed the defects of the popular governments of the dependencies of Athens: τοὺς δήμους ἐν ταῖς πόλεσιν διίξας ὡς δημοκρατοῦνται. Acharn. 642. So Aristotle, speaking of the proceedings of the Athenians and Lacedæmonians in the states which they respectively conquered, says, οἱ μὲν Ἀθηναῖοι παντα χοῦ τὰς ὀλιγαρχίας, οἱ δὲ Λάκωνες τοὺς δήμους κατέλυσαν. Pol. v. 7. Compare Wachsmuth, i. 2. p. 80—1. Thirlwall, vol. iii. p. 48.

‡ Boeckh, vol. ii. p. 146.

§ Boeckh, vol. ii. p. 146.

‖ Ibid. p. 141.

such portions of land were called *cleruchi*, and the settlement was called a *cleruchia*. Subject states of the latter description bear a close analogy to the *coloniæ* of the Romans, as will appear presently;* although they differed from the Roman *coloniæ* in not being intended to serve any military purpose.

Dependencies of Sparta.

Many of the Athenian dependencies were transferred to Sparta by the unfortunate event of the Peloponnesian war, and were governed by Sparta, during the short period of her ascendancy over them, in nearly the same manner in which they had been governed by Athens; except that their subordinate governments were made oligarchical, and that the Spartan governors (styled harmosts) appear to have interfered more extensively with the internal affairs of the dependent communities than the Athenian governors had done.† But besides her dependent allies beyond the sea, Sparta likewise possessed in her Peloponnesian territory, from the earliest times, a class of subjects, named *Periœci*. These subjects of Sparta seem to have lived in separate villages or communities, to have been placed under Spartan governors, and to have paid tribute by certain districts; so that they perhaps rather formed a cluster of dependencies around the dominant Spartan state, than a class of subjects or serfs under the immediate dominion of the Spartan

* Concerning the Athenian cleruchiæ, see Boeckh, b. 3. ch. 18. (vol. ii. p. 168—80). Thirlwall, vol. iii. p. 56. Polybius, Appian, and Dionysius, call the Roman colonists ἀπῳκοῦντες; see Polyb. ii. 21. iii. 40. iv. 81. Appian, B. C. i. 7. Dionys. Ant. Rom. ii. 16.

† Wachsmuth, i. 2. p. 244—6.

government.* The same relation probably subsisted in other Greek republics, which had subjects; for example, in the Cretan states and in Argos.

The transition from the complete independence of a political community to its complete dependence on another state, and from the complete dependence of a separate community, to its absorption and incorporation into the dominant community, might be so gradual as to render it difficult to determine, in any individual case, 1. At what moment the supreme government of the independent state became the subordinate government of a dependency; 2. At what moment the subordinate government of the dependency became a merely municipal body, and the inhabitants of the dependency became directly subject to the government of the dominant country. It has been already remarked that a tributary community is not necessarily dependent;† and such was the case of the allies of Athens after the Persian war, so long as the payment of their tributes remained voluntary. But by successive and almost insensible encroachments, Athens converted their voluntary tribute into a compulsory tax, and thus rendered them dependent upon her. The passage from a state of

* See Müller's Dorians, b. iii. ch. 2. § 1, 3. (vol. ii. p. 19. 27. Engl. transl.), Thirlwall's History of Greece, vol. i. p. 306 - 8. Ephorus speaks of the division of Laconia into six provinces, one of which consisted of the city and its district: Strabo VIII. 5. p. 364. ed. Casaubon, and compare Müller's Dorians, b. i. ch. 5. § 13. The Spartan governor and military commander sent to the island of Cythera, which was a perioecian dependency, bore the title of κυθηροδίκης, Thucyd. IV. 53; but, as Bishop Thirlwall remarks, vol. i. p. 308, no inference can be drawn from Cythera respecting the government of the Perioeci on the mainland.

† Above, p. 84.

bare dependence into an entire incorporation with the dominant state might be equally gradual. "The degrees (says Wachsmuth, in his Political Antiquities of Greece) by which a Greek community passed from the loosest to the strictest dependence, and from thence to the entire loss of its separate existence, and its merger in the dominant state, may be stated as follows:—1. The subjecting it to the payment of a compulsory tribute. 2. The requiring it to furnish troops, to be commanded by generals of the dominant country. 3. Supreme jurisdiction, arrangement of the magistrates, and other interferences with the internal affairs of the dependency; as, for example, when the Mytilenæans prohibited their revolted allies from teaching writing and music to their children. Beyond this point, a dependent community lost its separate existence; and its citizens became integral members of the dominant state, either by being admitted to its rights of citizenship, or by being degraded to the condition of periœci."*

Greek colonies.

We may here observe that the foreign settlements, or colonies (ἀποικίαι),† of the Greeks, were in general

* Vol. i. 1. p. 128. Wachsmuth in this passage considers periœci as directly subject to the government of an independent state. I have stated in p. 105, note*, my grounds for thinking that the periœci of Sparta may have been distributed into dependent communities; but the question is doubtful. See Philological Museum, vol. ii. p. 55, n. 21.

† Aristotle, among his multifarious works, wrote a treatise on the best mode of founding colonies. Ammonius ad Aristot. Categ. vol. iv. p. 35, a. ed. Bekker, says, concerning Aristotle's works, μερικὰ μὲν οὖν ἐστὶν ὅσα πρός τινα ἰδίᾳ γέγραπται, ὡς ἐστιοτελαὶ. ἢ ὅσα ἐρωτηθεὶς ὑπὸ Ἀλεξάνδρου τοῦ Μακεδόνος, περί τι βασιλείας, καὶ ὅπως δεῖ τὰς ἀποικίας ποιεῖσθαι, γεγεάφηκε. The title of the treatise seems to have been, Ἀλέξανδρος ἢ ὑπὲρ ἀποικιῶν. See Diog. Laert. v. 22. and Menage ad loc.

independent from their first establishment; and that if they became dependencies of the mother-country, it was by means of subsequent conquest or other aggressive interference; as was the case when some of her Ionian allies were reduced to subjection by Athens.* "The migrations of the Greek colonists (says Bishop Thirlwall) were commonly undertaken with the approbation and encouragement of the states from which they issued; and it frequently happened that the motive of the expedition was one, in which the interest of the mother country was mainly concerned: as, when the object was to relieve it of superfluous hands, or of discontented and turbulent spirits. But it was seldom that the parent state looked forward to any more remote advantage from the colony, or, that the colony expected or desired any from the parent state. There was in most cases nothing to suggest the feeling of dependence on the one side, or a claim of authority on the other. The sons, when they left their home to shift for themselves on a foreign shore, carried with them only the blessing of their fathers, and felt themselves completely emancipated from their control. Often the colony became more powerful than its parent, and the distance between them was generally so great as to preclude all attempts to enforce submission."†

* Other examples of the political dependence of Greek colonies on the mother country are given by Wachsmuth, Hellen. Alt. i. 1. p. 131—2.

† History of Greece, ch. 12. (vol. ii. p. 97.) And compare C. F. Hermann's Greek Antiquities, § 73—5. "If (say the Corcyræans in

The ties which bound together a Greek mother-country and its colony were not political, but moral. The relation between the state which sent out the emigrants, and the new state which they established, was conceived as analogous to the relation which subsists between a parent and a child; but, it is to be observed, between the parent and the emancipated, not the infant, child.* Accordingly, a mother-country was considered as morally bound to protect and assist its colony when involved in difficulties; while the colony was expected to pay certain marks of deference and respect, particularly in religious matters, to the mother-country.†

Colonies of the Phœnicians.

The foreign settlements of the Phœnicians appear to have been nearly similar to those of the Greeks, in respect of their relation to the mother-country. Whatever may have been their original condition, they seem for the most part, and especially the distant and powerful Carthage, to have acquired independent governments at an early period of their existence. "The great and difficult art (says

Thucydides to the Athenian assembly) the Corinthians affirm that you ought not to receive their colonists as your allies, let them learn that every colony, when it is well treated, honours the mother country, but is alienated from it by ill treatment; for colonists are sent out in order to be equal in rights with those who remain behind, and not to be their slaves:" *οὐ γὰρ ἐπὶ τῷ δοῦλοι ἀλλ' ἐπὶ τῷ ὁμοίοι τοῖς λειπομένοις εἶναι ἐκπέμπονται.* I. 34.

* Dionys. A. R. iii. 7. *ὅσης γὰρ ἀξιοῦσι τιμῆς τυγχάνειν οἱ πατρίδις παρὰ τῶν ἐγγόνων, τοσαύτης οἱ κτίσαντες τὰς πόλεις παρὰ τῶν ἀποίκων.* See Heyne, Opuscula, vol. i. p. 312, concerning the filial relation of the colony to the state which founded it.

† See Thucyd. i. 24, and the following chapters, from which the sentiments of the Greeks respecting the colonial relation can be fully collected.

Heeren) of keeping colonies in dependence, which the Carthaginians understood so completely, was not equally well known to the Phœnicians. The colonies of the Phœnicians, favoured by their position, grew more powerful than the mother-state, and became independent, if they were not independent from the beginning. The causes of their independence are obvious. In the first place, the Phœnicians (like other commercial nations in later times) extended their settlements over a wider surface than their power enabled them to command. In the second place, Tyre was not so centrally situated with respect to its colonies, as Carthage; and hence, even if it had been able to raise equally large armies, it would not have been able to use them with equal effect in all directions. Carthage could, without any great exertion, transport its armies to Sicily and Sardinia; England can, in our days, send armies to the East Indies: but if Tyre had attempted to send an Asiatic army to Spain, the attempt would probably have failed. With the exception, therefore, of the neighbouring islands, such as Cyprus and others, or of some of the more distant settlements, particularly the mining colonies, where the natives were forced to labour, the relation of the Tyrians with their colonies was confined to commercial intercourse, and the duties of a reciprocal affection, the latter of which were never omitted, and the former was constantly maintained."*

* Ideen. vol. i. Part II. p. 36—7. conf. p. 31. 51—2. Heyne also

Dependencies of Carthage.

The republic of Carthage had a double set of dependencies. One set consisted of the African towns and provinces in the vicinity of Carthage, which appear to have been tributary to the chief city, and to have stood to it in nearly the same relation as the islanders of the Ægean sea to Athens, and the towns of the Perioeci to Sparta.* The unwilling obedience which these towns and districts rendered to Carthage, on account of the oppressiveness of the rule to which they were subject, appears from the alacrity with which they joined the revolted mercenaries after the first Punic war.† These dependent communities never were incorporated with the dominant republic either in

remarks that proximity was a necessary condition for the subjection of a Greek colony to its mother state. "Loca quæ a novis colonis erant occupata, agri, mœnia, novæ civitatis initia constituisse videbantur, cui suo jure uti liberum esset. Id quod tanto magis locum habebat, si in terras aut insulas mari interjecto remotas coloni exiissent." "In propinquo itaque, nec longe a metropoli dissito loco sedem figere debuit colonia, in quam illa jus suum exercere inciperet." De veterum coloniarum jure ejusque causis, Opuscula, vol. i. p. 302, 304.

* Concerning the Carthaginian dependencies in Africa, see Arnold's History of Rome, vol. i. p. 477–83.

† See Heeren's Ideen, vol. ii. i. 43. 90. 153—4. (African nations, vol. i. p. 41. 60. 88. 147—8. Engl. transl.) The chief authority respecting the subject towns of Carthage is Polyb. i. 72. Aristot. Polit. ii. 11. calls them αἱ πόλεις; in vi. 5., he calls them αἱ περιοικίδες. According to Polyb. i. 10, the Carthaginians held in subjection the shores of Libya, many parts of Iberia, and all the isles of the Sardinian and Tyrrhenian sea. The expressions used by Polybius in i. 10, and in iii. 39. (ἐγκρατεῖς ὑπάρχοντες, ἐκυρίευον, ἐκεκρατήκεισαν) show that the towns and settlements of the Carthaginians were strictly dependencies. Polybius states in i. 70, that Matho sent envoys to the African cities, παρακαλοῦντες ἐπὶ τὴν ἐλευθερίαν. The term ἐπικράτεια is likewise applied to the Carthaginian dependencies in the Treatise De Mirabilibus, ascribed to Aristotle. Ἐν δὲ τῇ ἐπικρατείᾳ τῶν Καρχηδονίων φασὶν ὄρος εἶναι καλούμενον Οὐράνιον. c. 113. ed. Bekker.

government or in feeling; and their proneness to revolt on the approach of an enemy always continued to be the main cause of the internal weakness of Carthage. That the subject allies of Carthage were its vulnerable point had been likewise previously known to the Athenians, who are reported by Thucydides to have intended to have attacked Carthage in this quarter, if they had succeeded in subjugating Sicily.*

The other set of Carthaginian dependencies consisted of its foreign settlements, which appear to have been partly commercial and partly military. The Carthaginians had establishments on the coast of Spain, in the Balearic islands, Sardinia, Corsica, Sicily, Malta, and elsewhere.† The Carthaginian settlements did not, like those of the Greeks, become independent; but like those of Rome, remained in a state of dependence upon the mother-country.

The Carthaginian dependencies, both in Africa

* Ἰστιαῖά καὶ τῆς Καρχηδονίων ἀρχῆς καὶ αὐτῶν ἀποπειράσεσις, Thuc. vi. 90. That is, the Athenians intended first to attempt to detach the Carthaginian dependencies, and then to attack Carthage itself. It was a common policy among the ancients for an attacking state to attempt to detach the dependencies of its enemy, before it invaded the central territory. The discontent of dependencies, and their consequent proneness to revolt, was not the only, or indeed the main inducement to the adoption of this policy. The main inducement was, that dependencies were tributary, and therefore the loss of them diminished the resources of the dominant country. In modern times, the loss of a dependency does not in general diminish the revenue of the dominant state, or curtail its military or naval power. At the most, the loss of it may be a commercial disadvantage to the dominant state.

† Heeren's Ideen, vol. ii. Part I. p. 41. 63—107. (African Nations, vol. i. p. 39. 61—104. See particularly p. 94.)

and beyond the seas, appear to have been placed under military governors. The principal function of the military governors of the African cities and districts was the collection of the tribute due to the dominant state. Polybius states that the severity with which these commanders exacted the tribute was the main cause of the disaffection of the subject communities during the war of the mercenaries.* This severity, however, was exercised with the full approbation of the Carthaginian government; for Polybius says, that the Carthaginians admired and honoured the governors who levied the largest tribute, and employed the harshest measures for levying it, and not those who dealt mildly and humanely with the people.† The Carthaginians appear to have derived little tribute from their foreign possessions; but they maintained troops and military commanders in them; and the latter were probably provincial governors. Sardinia was lost to the Carthaginians by the defection of the garrison of mercenaries, which was commanded by a Carthaginian citizen.‡

Dependencies of Rome.

The Roman state, likewise, by its conquests and encroachments, gradually acquired an immense system of dependencies. It is not consistent with the purpose of the present Essay to enter at large

* Concerning the oppressive rule of dependencies, see the remarks of Ralegh, suggested by the Carthaginian war of the mercenaries; History of the World, book V. ch. 2. § 2. (vol. vi. p. 132. ed. Oxford.)

† Polyb. i. 72. The goodness of a collector in British India appears to have been formerly tried by a similar standard.

‡ Polyb. i. 79. 88.

into the extensive subject of the dependencies of the Roman republic and empire; but it will be convenient, on account of their great importance in the history of the world, to indicate briefly their nature.

The Roman dependencies fall into two main classes, viz., those in Italy, and those out of Italy.*

With the exception of the City of Rome, and a small district belonging to it, the whole of Italy, as it was gradually absorbed into the dominions of the Roman Republic, was formed into a system of dependencies.

Municipia.

One portion of the independent states of Italy, being reduced by Rome and incorporated with the Roman Commonwealth upon different conditions, obtained the name of *municipia*.† The *municipia* were city communities, once independent, which were admitted by Rome to a more or less ample participation in the rights of Roman citizens; but which, after their annexation to the Roman state, retained their own distinct city organization, their own political divisions and magistrates, their own legislative assemblies, and their own laws and judicatories;‡ so far as these were consistent with their

* See generally Savigny's Geschichte des Römischen Rechts im Mittelalter, vol. i. ch. 2, and Hopfensack, Staatsrecht der Unterthanen der Römer (Düsseldorf, 1829.)

† See Roth de Re Municipali Romanorum (Stuttgartiæ, 1801.) Hopfensack, ubi sup. p. 131—42.

‡ The following account of the distinction between a municipium and a colonia is given by Aulus Gellius.

Municipes sunt cives Romani ex municipiis, legibus suis et suo jure utentes, muneris tantum cum populo Romano honorarii parti-

dependence upon the Roman government.* Moreover, upon their annexation to the Roman state, their population was not disturbed, nor were the rights of the existing proprietors interfered with for the benefit of Roman citizens. But they were subject to the general control of the sovereign body in Rome; and their government, having originally been the sovereign government of an independent state, became the subordinate government of a dependency.†

Coloniæ. The other principal class of Roman dependencies in Italy consisted of the *coloniæ*.‡ The *coloniæ* were settlements of Roman citizens in Italy, who occupied a conquered town, divided the whole or a large part of the lands belonging to its citizens

cipes, nullis aliis necessitatibus, neque ulla populi Romani lege astricti, nisi populus eorum fundus factus est ..... Sed *coloniarum* alia necessitudo est: non enim veniunt extrinsecus in civitatem, nec suis radicibus nituntur: sed ex civitate quasi propagatæ sunt; et jura institutaque omnia populi Romani, non sui arbitrii habent: quæ tamen conditio, cum sit magis obnoxia et minus libera, potior tamen et præstabilior existimatur, propter amplitudinem majestatemque populi Romani, cujus istæ coloniæ quasi effigies parvæ simulacraque esse quædam videntur: et simul quia obscura oblitaque sunt municipiorum jura, quibus uti jam per innotitiam non queunt. Noct. Att. xv. 13. Cicero de Leg. iii. 16, speaks of his grandfather having resisted the passing of a *lex tabellaria* in the municipium of Arpinum. Compare Savigny, ibid. p. 39. A *lex tabellaria* was a law for enabling votes to be given secretly, or (as we should now say) to be given by way of ballot. Concerning the subordinate government and its power of subordinate legislation in a municipium, see Heineccius, Ant. Rom., lib. i. § 120, 123. Roth ubi sup. p. 21-3, Hopfensack, p. 134. 137-8.

* This limitation is properly indicated by Hopfensack, p. 138.

† See Hopfensack, p. 138.

‡ Hopfensack, p. 143-66.

among themselves,* and became the *coloni*† or cultivators of the lands thus appropriated. A subordinate government was established in a *colonia*, which appears not to have differed essentially from that of a *municipium*. But although the *jus publicum*, or constitutional law, of a *municipium* and a *colonia* would naturally be nearly similar, inasmuch as they were dependencies subject to a common superior, yet the *jus privatum*, or civil law, of a *municipium* would naturally be different from that of a *colonia*. For a *municipium* retained the civil law which it possessed when it became a dependency of the Roman state; whereas a *colonia*, as being a settlement of Roman citizens, adopted the Roman system of jurisprudence.‡

The preceding account of the origin of a Roman *colonia* shows its difference from that of a Grecian

* Concerning the division of lands in a Roman colony among the colonists, see Heyne, Opuscula, vol. iv. p. 352.

† *Colonia* was formed from *colonus;* and *colonus* was formed from *colo*, and signified a cultivator. *Colonia* had also the sense of a farm: see Forcellini in v. Compare the modern word *plantation*, which means both a farm and a settlement. The idea of cultivation, and not of military occupation, was therefore contained in the word *colonia*.—Concerning the *coloni*, who were a class of cultivators in the Roman empire, attached to the soil, and little raised above the condition of serfs, see an excellent dissertation by Savigny, translated in the Philological Museum, vol. ii. p. 117. The name seems to have been derived from *colonus* in the sense of cultivator, and to have had no connexion with the Roman colonies. *Colona*, in the sense of a peasant-woman (like the Italian *contadina*), occurs in Ovid, Fast. ii. 646, iv. 692.

> Hoc, ait, in campo (campumque ostendit) habebat
> Rus breve cum duro parca *colona* viro.

‡ Heineccius, Synt. Ant. Rom., lib. i. § 131, and Gellius, quoted above.

colony. The Grecian colonies were independent from the beginning; they were sometimes founded without the express authority of the government of the state from which the colonists proceeded; or, at any rate, they were not intended to increase its power by enlarging its dominions; and they were usually established in some unoccupied or partially occupied territory. The Roman colonies, on the other hand, were in general established in existing towns, the citizens of which were ejected and deprived of their lands;* the colonists were sent out by the authority of the government for the purpose of confirming and extending the Roman influence; and they were paid for this service by grants of lands. Moreover, instead of being independent of the parent-state, they were strictly dependent on it, and the political rights of the colonists were very limited.† In fact,

* Servius ad Æn. i. 12. (vol. i. p. 9. ed. Lion). Sane veteres colonias ita definiunt. Colonia est cœtus eorum hominum qui universi deducti sunt in locum certum ædificiis munitum, quem certo jure obtinerent. See the rest of the passage, with Niebuhr's explanations, in his History of Rome, vol. ii. note 80. Compare Appian Bell. Civ. i. 7. Ῥωμαῖοι τὴν Ἰταλίαν πολέμῳ κατὰ μέρη χειρούμενοι γῆς μέρος ἐλάμβανον, καὶ πόλεις ἐνῴκιζον, ἢ ἐς τὰς πρότερον οὔσας κληρούχους ἀπὸ σφῶν κατέλιγον, καὶ τάδε μὲν ἀντὶ φρουρίων ἐνόμιζον. Dionysius, Ant. Rom. ii. 16, likewise commends the policy of the Romans in not destroying the male population of the conquered cities, or reducing it to slavery, and occupying their territory merely as pasture-ground; ἀλλὰ κληρούχους ἐς αὐτὰς ἀποστέλλειν ἐπὶ μέρει τινὶ τῆς χώρας, καὶ ποιεῖν ἀποικίας Ῥωμαίων τὰς κρατηθείσας.

† Hopfensack, pp. 147-8. Compare Heyne, De Romanorum prudentia in coloniis regendis, Opuscul. vol. iii. p. 83. The latter Essay contains proofs that the allegiance of the Roman colonies was mainly secured by fear. The Roman colonies were, however, more favoured by the senate than the Roman dependencies which had been acquired by treaty or conquest; see Cicero de Off. iii. 22.

the Roman colonies were in their origin (as Niebuhr remarks) little more than garrisons in conquered fortified places, where land was allotted to the soldiers instead of pay and provisions.* The Greek colonies were somewhat similar to the English colonies in America, especially after the independence of the latter; while the Roman colonies rather resembled the Venetian colony in Crete, and the recent French colony in Algiers. The only establishments in Greece which resembled the Roman colonies were the Athenian *clerŭchiæ*, of which an account has been already given.

The Roman dependencies out of Italy were the *provinces*.† Provinciæ.

The Roman provinces were originally independent states, which, having been conquered by Rome, were, to use the Roman phrase, "reduced under the

* History of Rome, vol. ii. p. 51. Hence Livy uses the expression, "*imponere* coloniam in agro Samnitium," viii. 23. Cicero gives a similar account of the early Roman colonies: "Quo in genere, sicut in ceteris rei publicæ partibus, est operæ pretium diligentiam majorum recordari; qui colonias sic idoneis in locis contra suspicionem periculi collocarunt, ut esse non oppida Italiæ, sed propugnacula imperii viderentur." De Leg. Agr. contra Rullum, ii. 27. In later times, when the supremacy of Rome was undisputed, the division of the land, for the purpose of satisfying troublesome adherents, and not the security of the republic, was the main object of colonies. On the military colonies, see Hopfensack, pp. 166-9.

† Hopfensack, pp. 170-4. It appears from Niebuhr's letters, that he had formed a design of writing a dissertation on the constitution of the Greek provinces and cities of the Roman empire: see Lebensnachrichten über B. G. Niebuhr, vol. ii. pp. 321-2. It is much to be regretted that he did not live to carry his Roman history down to a period when this subject would have entered naturally into the plan of the work.—Concerning the etymology of the word *provincia*, see note (II.) at the end of the volume.

formula of a province;"* that is, brought within the rules determining the condition of a provincial dependency. The rules determining this condition were very various, and probably only agreed in one circumstance, viz.:—that the province was placed under the immediate superintendence of a resident Roman governor. The provincial governors, under the republic, were first styled prætors, and afterwards proprætors and proconsuls; and their authority extended over all civil and military affairs in the province.† An alteration in this system was made by Augustus, who divided the provinces into the two classes of *senatorian* and *imperatorial:* in the senatorian provinces a governor was appointed by the senate, whose power extended over the civil departments of the government, while the military functions were reserved to an officer appointed by the emperor; in the imperatorial provinces, the governor, styled the *legatus Cæsaris*, or lieutenant of

* "In formam (or formulam) provinciæ redigere." See Heineccius, Ant. Rom., lib. i. § 100. In later times, *forma* meant a rescript or constitution of the emperor; Capitolin. in Antonin. Pio, c. 6. (cited by Facciolati in v.) "Neque de provinciis neque de ullis actibus quidquam constituit, nisi quod prius ad amicos retulit; atque ex eorum sententia *formas* composuit."

† The following definition of the jurisdiction and other powers of the provincial proconsul, which is given in the Digests, may serve to illustrate the statements which I have made in a former chapter, respecting the extent of the powers delegated to a subordinate government. Quum plenissimam jurisdictionem proconsul habeat, omnium partes, qui Romæ vel quasi magistratus, vel extra ordinem jus dicunt, ad ipsum pertinent. Et ideo majus imperium in ea provincia habet omnibus post principem. *Nec quidquam est in provincia, quod non per ipsum expediatur.* Dig., lib. i. tit. 16. fr. 7-9. See above, p. 74.

the emperor, directed both the civil and military affairs of the province. Numerous other changes in the titles and distribution of the provincial governors were made by the subsequent emperors, which it is not necessary for me to pursue.

The regulations respecting the appointment, powers, and rank of the Roman governors, and the duration of their office, constituted the only part of the provincial institutions of Rome which were uniform throughout the provinces. In all other respects, there was the utmost diversity in the provincial governments. It was the general policy of the Romans not to make more changes in a conquered territory than were necessary for the purpose of reducing it to complete subjection. Hence, when they had firmly established its dependence on Rome, by garrisoning all its strong places with Roman legions, and collecting all its public revenues by Roman officers, they were content to allow the ancient civil law of the country, its religion, and other peculiar institutions of a like nature, to remain untouched.* The Romans appear to have adopted this course partly upon reflection and from a conviction of its expediency, and partly from a certain haughty indifference which led them to turn away with contempt from questions about matters not affecting the maintenance of their own authority.†

* See Hopfensack, p. 11. Concerning the non-interference of the Romans with the religion of the provinces, see Heineccius, Ant. Rom., lib. i. § 101. note.

† The conduct of Gallio, described in the Acts of the Apostles,

Accordingly, there were sometimes petty native rulers, who retained their former title and dignity, under the supremacy of Rome,* as, for example, the tetrarchs of Judea. It may be added, that the entire state of Judea, as described in the historical books of the New Testament, affords a lively image of the continuance of the peculiar laws and religious usages of a Roman dependency out of Italy.

When a community had become a provincial dependency of Rome, its law was derived from one of the four following sources.† 1. The *formula* of the province, which prescribed the terms upon which it was annexed to the Roman state, at the original conquest.‡ 2. Acts of the supreme Roman legis-

is so characteristic of the feelings of the Romans in this respect, that I am induced to quote the passage, although it is so well known.

"And when Gallio was the deputy of Achaia, the Jews made insurrection with one accord against Paul, and brought him to the judgment seat, saying, This fellow persuadeth men to worship God contrary to the law. And when Paul was now about to open his mouth, Gallio said unto the Jews, If it were a matter of wrong or wicked lewdness, O ye Jews, reason would that I should bear with you: but if it be a question of words and names, and of your law, look ye to it; for I will be no judge of such matters. And he drave them from the judgment seat. Then all the Greeks took Sosthenes, the chief ruler of the synagogue, and beat him before the judgment seat. And Gallio cared for none of these things." Act. Apost. xviii. 12-7.

* Strabo xvii. c. 3, speaking of the Roman provinces, says: εἰσὶ δὲ καὶ δυνάσται τινὲς καὶ φύλαρχοι καὶ ἱερεῖς ὑπ' αὐτοῖς· οὗτοι μὲν δὴ ζῶσι κατά τινας πατρίους νόμους. Compare Tacit. Agric. c. 14. Redacta paulatim in formam provinciæ proxima pars Britanniæ: addita insuper veteranorum colonia: quædam civitates Cogiduno regi donatæ (is ad nostram usque memoriam fidissimus mansit); vetere ac jam pridem recepta populi Romani consuetudine, ut haberet instrumenta servitutis et reges.

† Concerning the three first sources, see Heineccius, ib. § 101. Compare Hopfensack, pp. 4-14.

‡ The terms granted by Rome to a dependency upon its acquisi-

lature, binding the province specially, or the provinces generally. For example, the power of obtaining a guardian by the appointment of certain public officers, which was created in Rome by the Atilian law, was extended to the provinces by the Julian and Titian law.* 3. Edicts of the provincial prætors, or governors. A provincial prætor (like the prætor urbanus) originally commenced his government by stating at length, in an edict which he promulgated, the principles or maxims which he intended to follow in administering justice, and generally in conducting the government of the province. A full account of the edict which Cicero issued when he was governor of the province of Cilicia, is preserved in his letters.† It was natural

tion were often called a *fœdus*, or treaty; and the dependency was called an ally (*socius*). The name of *civitas fœderata* or *socia* was common to the municipal dependencies in Italy and to the provincial dependencies out of Italy. One of the technical phrases by which the dependence of an allied state upon Rome was expressed in a treaty, was: "majestatem populi Romani comiter conservato." Cicero pro Balbo, c. 16. Compare Hopfensack, p. 8.

* Si cui nullus omnino tutor fuerat, ei dabatur in urbe quidem Roma a prætore urbano et majore parte tribunorum plebis tutor ex lege Atilia, in provinciis vero a præsidibus provinciarum ex lege Julia et Titia. Inst. i. 20. Other similar laws are enumerated in Heineccius, § 102. 104. A Roman dependency, either in or out of Italy, which had once been independent, might, by its own act, adopt any law of Rome which did not affect its relations as a dependency with Rome. The dependency, after this adoption, was said to have become *fundus* of the law; *fundus* having borne the sense of *auctor* or *subscriptor*. See Cicero pro Balbo, c. 8. 17, 18, 21, with the explanation of Heineccius, lib. i. § 88. This practice was probably disused under the empire, when the provinces had become more completely dependent, and their systems of law had been gradually assimilated to that of Rome.

† Cicero ad Att. v. 21. vi. 1. Ep. ad Fam. iii. 8. "Ex quibus patet (says Heineccius) simillima quidem inter se fuisse edicta ur-

for a new governor, both for his own convenience and for the benefit of the provincials, to adopt the whole or a large part of the edict of his predecessor. An edict, of which the substance was thus borrowed from a previous edict, was called *tralatitium;* and, having been retained by several successive governors, became an edict peculiar to the province.* 4. The native jurisprudence of the country, as it existed before the country became a Roman dependency. The provinces retained generally, upon their first reduction under the Roman sway, nearly all the peculiar institutions which were not inconsistent with the supremacy of Rome. Accordingly, their rules of law respecting property, contracts, marriage, and the like, continued to be administered by the courts of the province as heretofore. We know in some cases, that the continuance of its

bana et provincialia; sed tamen non statim idem obtinuisse in provincia quod Romæ fuerat vel lege vel moribus receptum."—Ant. Rom., lib. i. § 103. Cicero, in his prosecution of Verres, states that Verres modified one clause of the prætor's edict at Rome, from a corrupt motive, in order to favour a plaintiff in a certain action; but that when he transferred the rest of his edict to Sicily, he excluded this clause, thus admitting its impropriety. Cicero then proceeds to say: "Utrum digniores homines existimasti eos, qui habitabant in provincia, quam nos, qui æquo jure uteremur? an aliud Romæ æquum est, aliud in Sicilia? Non enim hoc potest hoc loco dici, multa esse in provinciis aliter edicenda: non de hereditatum quidem possessionibus, non de mulierum hereditatibus. Nam utroque genere video non modo ceteros, sed te ipsum totidem verbis edixisse, quot verbis edici Romæ solet."—Act. ii. lib. i. c. 46. If the principle implied in this passage was consistently acted upon in the preparation of the provincial edicts, it must, in no long time, have led to the assimilation of the private law of the provinces with that of Rome.

* Heineccius, ibid. § 104. Concerning the jurisdiction of the provincial governors, see § 111.

own laws (*i. e.* its laws relating to such subjects as those just mentioned) was expressly promised to the province;* and when some of the provinces are said to have been governed by their own laws (to have been αὐτόνομοι), this is the meaning of the expression.†

* One of the conditions of the treaty by which Carthage became a Roman province was: ἴδιοι καὶ νόμοις χρῆσθαι τοῖς ἰδίοις, ἀφρουρήτους ὄντας, Polyb. xv. 18. The following were the conditions allowed to the Macedonians, upon becoming a Roman dependency: Omnium primum liberos esse jubere Macedonas, habentes urbes easdem agrosque, utentes legibus suis, annuos creantes magistratus: tributum dimidium ejus quod pependissent regibus, pendere populo Romano. Deinde in quatuor regiones dividi Macedoniam . . . capita regionum ubi concilia fierent . . . eo concilia suæ cujusque regionis indici, pecuniam conferri, ibi magistratus creari jussit.—Livy xlv. 29. These conditions distinctly mark the existence of a subordinate government, and the maintenance of the native laws. The conditions granted to the Sicilians with respect to jurisdiction are stated in Cicero, Verr. Act. ii. lib. ii. c. 13. conf. Act. ii. lib. iii. c. 6. The plebiscitum de Thermensibus, lin. 11-14. Iique legibus suis utunto, itaque iis omnibus suis legibus Thermensibus uti liceto, quod adversus hanc legem non fiat. The last words of this extract express the condition with which every law of a subordinate government must comply: see above, p. 60.

† The libertas or αὐτονομία of a Roman dependency consisted mainly in its being allowed to retain its own civil laws, and to administer them by native judges. Thus Cicero, speaking of the edict which he had issued as governor of the province of Cilicia, says: "Multa sum secutus Scævolæ [i. e. an edict issued by Q. M. Scævola, when governor of Asia]; in iis illud in quo sibi libertatem censent Græci datam, ut Græci inter se disceptent suis legibus." Afterwards he adds: "Græci vero exultant quod peregrinis judicibus utuntur. Nugatoribus quidem, inquies. Quid refert? tamen se αὐτονομίαν adeptos putant."—Epist. ad Att. vi. 1. This species of αὐτονομία is perhaps more precisely expressed by the Greek word αὐτοδικίαν.—See Thucyd. v. 18, and Goeller's note. Dolabella is stated, when pro-consul of Asia, to have remitted an accusation of poisoning which presented some peculiar difficulties, to the Areopagus at Athens (Gellius N. A. xii. 7.) Dolabella was consul in 81 B. C. The *libertas* of a Roman dependency might likewise mean that it was not liable to be constantly garrisoned by Roman troops: see Creuzers Abriss der Römischen Antiquitäten, §. 214, and compare Heyne's Opuscula, vol. iv. p. 536-7.—The following extract

The Roman provinces were tributary to Rome; and the public revenues were collected by Roman questors, who remitted the produce of the taxes to the Roman treasury, after having defrayed the expenses of the provincial government. A province either paid its tribute in a gross sum, or its tribute was levied by a land-tax, a tax for pasturage, or custom-duties, imposed directly by the Roman government on the provincials.*

Although the revenues and supplies derived from the provinces were considered an important resource of the Roman state,† yet it does not appear that the regular taxation was very oppressive to the provinces. The chief evils inflicted upon the provinces arose from the rapacity of the governors, and the extortions which they practised for their private gain. The provincial governors were necessarily invested with very extensive powers, and they were imperfectly controlled either by law or the opinion

from the fourth book of a treatise by Ulpian De officio proconsulis, preserved in the Digests, lib. i. tit. 3. fr. 39, adverts to the retention of the native laws in a province. "Cum de consuetudine civitatis vel provinciæ confidere quis videtur, primum quidem illud explorandum arbitror, an etiam contradicto aliquando judicio consuetudo firmata sit." Dirksen, Man. Latinit. font. J. C. in v. explains *contradictus* in this passage to mean "contradictione confirmatus." It seems to me that the words "judicio contradicto" signify only a decision given in a contested or defended action; that is, an action in which the point was expressly raised and argued by the litigant parties, and therefore solemnly decided by the court. Perhaps this was the meaning which Dirksen intended to convey.

* See Heineccius, ibid. § 114-8. Hopfensack, p. 172.

† Quasi quædam prædia populi Romani sunt, vectigalia nostra atque provinciæ, says Cicero, Verr. Act. ii. lib. ii. c. 3.

of their fellow citizens. A Cicero or an Agricola might be restrained by his own conscience from plundering his provincial subjects;* but, when there was no other restraint than conscience, it was natural that the conduct of the provincial governors should have been such as it is described to have been. The rapacity of Verres has become proverbial on account of the elaborate exposure which it has received from Cicero; and the revolt of the Jews was mainly caused by the unusual extortions of three successive governors. Tacitus states, in the beginning of the Annals, that the provinces willingly acquiesced in the change from the republic to the empire, on account of the imperfect protection which they had received from the senate and the people;† but from a passage in the Life of Agricola,‡ it ap-

* Cicero's high estimate of the duties of a provincial governor may be learned from his Epistle ad Quintum fratrem, i. 1.

† Neque provinciæ illum rerum statum abnuebant, suspecto senatus populique imperio, ob certamina potentium et avaritiam magistratuum; invalido legum auxilio, quæ vi, ambitu, postremo pecunia turbabantur.—Ann. i. 2. A provincial governor was liable to be called to account judicially for maladministration in his province, after his return from it: but the difficulty of success in such an accusation, the strong inducements not to come forward, and the feeble inducements to come forward, as public prosecutor, appear sufficiently from Cicero's first Verrine Oration. "Hoc jure sunt socii (he says in another part of the Verrine prosecution), ut iis ne deplorare quidem de suis incommodis liceat."—Act. ii. lib. ii. c. 27. And again: "Contempsit Siculos: non duxit homines: nec ipsos ad persequendum vehementes fore, et vos eorum injurias leviter laturos existimavit."—Ib. Act. ii. lib. iii. c. 23.

‡ Sors quæsturæ provinciam Asiam, proconsulem Salvium Titianum, dedit; quorum neutro corruptus est; quamquam et provincia dives ac parata peccantibus, et proconsul in omnem aviditatem pronus, quantalibet facilitate redempturus erat mutuam dissimulationem mali.—Tacit. Agric. c. 6. Bato, the king of a Dalmatian

pears that this change produced no benefit to the provinces; that a provincial government was still looked upon as a subject of legitimate gain to a governor; and that his power of taking from the provincials was chiefly limited by their incapacity of paying.*

tribe, when asked by Tiberius, in the lifetime of Augustus, why the Dalmatians had revolted from the Romans, and fought so long against them, said that the Romans were the cause of the resistance, in sending not dogs or shepherds, but wolves, to guard their flocks. —Dion Cassius, l. vi. c. 16.

* Cicero, speaking of Verres's corrupt exercise of his prætorian jurisdiction at Rome, says: "Quid ego istius in jure dicundo libidinem demonstrem? Quis vestrum non ex urbana jurisdictione cognovit? quis unquam isto prætore, Chelidone invita, lege agere potuit? *non istum, ut nonneminem, provincia corrupit;* idem fuit qui Romæ."—Act. ii. lib. ii. c. 16. The following, after making all due allowance for rhetorical exaggeration, is a remarkable testimony to the excesses of the Roman provincial governors in Cicero's time. "Lugent omnes provinciæ: queruntur omnes liberi populi: regna denique jam omnia de nostris cupiditatibus et injuriis expostulant: locus intra oceanum jam nullus est, neque tam longinquus, neque tam reconditus, quo non, per hæc tempora, nostrorum hominum libido iniquitasque pervaserit. Sustinere jam populus Romanus omnium nationum non vim, non arma, non bellum, sed luctum, lacrymas, querimonias non potest."—In Verr. Act. vi. lib. iii. c. 89. It is to be observed, that the Roman provincial governors, like the chief officers of the ancient states generally, and particularly of the more aristocratic states, were unpaid. The regulation that governors should buy nothing in their province, likewise proves their proneness to plunder the provincials. See note (I.) at the end of the volume.—Nevertheless, it cannot be doubted that the Roman provinces were, on the whole, governed more leniently than any other dependencies in the ancient world. Although Cicero's letter to his brother Quintus must be considered as a very favourable specimen of the opinions and principles of a Roman respecting the manner of conducting a provincial government, it may be observed that the titles in the Digests concerning the offices of a proconsul and a præses (lib. i. tit. 16. 18) breathe a spirit of wise moderation towards the provincials, and of an enlightened regard for their feelings and interests. Heyne indeed thinks that the provincial government of the Romans was as bad as that of the Ottomans; and he

Nevertheless, the Romans were able for a long time to maintain the obedience of their provinces, and to suppress every attempt at resistance to their authority. This result was mainly owing to the efficient military system of the Romans, and to the masterly manner in which they occupied a province, by stationing their legions in strong towns and fortified camps, and by making and maintaining their communications by means of the roads and bridges which they constructed.* The celebrated lines of Virgil, which (after admitting the superiority of the Greeks in the fine arts, literature, and the physical sciences) make the characteristic excellence of the Romans to consist in their practice of the art of governing,† are peculiarly applicable to the system

places a Roman proconsul on the same level with a Turkish pasha. "Inter prætores legatosque et paschas Othmanorum quid discriminis intercedat, nemo facile docuerit."—Opuscula, vol. iii. p. 151. But this judgment seems to me to exaggerate the defects of the Roman provincial government far beyond the truth.

* Bergier, in his Histoire des Grands Chemins de l'Empire Romain, attributes the construction of the Roman roads to the following four causes.

"Le premier est, pour donner en temps de paix de l'exercice, tant aux gens de guerre, qu'à la populace de chacune province, pour éviter les tumultes, séditions, et autres mouvemens, que l'oisiveté, mère de tous maux, a coûtume de produire. Le second, pour envoyer des nouvelles en peu de temps de la ville de Rome aux extrémités de l'empire; et en recevoir de toutes les provinces avec pareille célérité. Le troisième, pour conduire et transporter les armées romaines en tout temps et en tous lieux où les affaires les réquéroient. Le quatrième, pour faciliter les voyages, soit à pied, soit à cheval ou à charroi."—Liv. iv. ch. 1. § 3. (tom. ii. p. 608); and on the number of the roads in the provinces, see Bergier, liv. iii. ch. 5. (tom. i. p. 331.)

† Tu regere imperio populos, Romane, memento:
Hæ tibi erunt artes.

by which the latter ruled their dependencies. And although Greece introduced its arts, literature, and science into Rome, and is admitted by the Roman writers to have civilized its fierce conqueror, yet it is to be remembered that Rome, on the other hand, introduced its system of law into Greece, where it remained in force until the fall of the Eastern empire, and, indeed, was not quite extirpated by the Ottoman conquerors. It is a great error to represent the Romans as having been, during their whole national existence, a mere rude community of conquerors, who contributed nothing to the advancement of mankind. The Romans were as much superior to the Greeks in the science and art of civil government, as the Greeks were superior to them in the physical and mental sciences, and in literature; and the law of the Romans has, perhaps, done as much for modern civilization as the literature and science of the Greeks.*

* Claudian, in his poem de Secundo Consulatu Stilichonis, says of Rome, characteristically:—

"Armorum legumque potens, quæ fundit in omnes
Imperium, primique dedit cunabula juris."—v. 136, 7.

and afterwards, he adds the following verses respecting the facility of intercourse which the Romans had introduced into their vast empire, partly by the maintenance of peace, and partly by their roads and other conveniences for travelling:

"Hujus pacificis debemus moribus omnes
Quod veluti patriis regionibus utitur hospes;
Quod sedem mutare licet; quod cernere Thulen
Lusus, et horrendos quondam penetrare recessus;
Quod bibimus passim Rhodanum, potamus Orontem;
Quod gens una sumus."—v. 154—9.

a passage which will be reduced to sober truth by the invention of steam-railways.

The distinctions which originally existed between different classes of dependencies in Italy, and between those of Italy and the provinces, gradually disappeared, under the assimilating influence of a common supreme government. The *jus Latii*, or privileges of the Latin confederate states, were first extended to various communities in Italy; then the rights of Roman citizenship were communicated to the whole of Italy by the Julian law after the Social war;* and lastly, a constitution of Caracalla extended these rights to the provinces. Before the time of Caracalla, many towns in the provinces had been erected into municipia, and many colonies had been founded in them; but under the empire, the distinction between a municipium and a colony had been nearly forgotten, and the peculiar institutions of the Italian municipia had become obsolete.†

* Cicero considers the liberality of the Romans in admitting foreign nations to the rights of Roman citizenship, as the main cause of the increase and greatness of the Roman dominion. "Illud vero *sine ulla dubitatione* maxime nostrum fundavit imperium, et populi Romani nomen auxit, quod princeps ille, creator hujus urbis, Romulus, fœdere Sabino docuit, etiam hostibus recipiendis augeri hanc civitatem oportere: cujus auctoritate et exemplo nunquam est intermissa a majoribus nostris largitio et communicatio civitatis. Itaque et ex Latio multi, et Tusculani, et Lanuvini, et ex ceteris generibus gentes universæ in civitatem sunt receptæ, ut Sabinorum, Volscorum, Hernicorum." Pro Balbo, c. 13. Dionysius contrasts the liberality of the Romans in this respect with the exclusiveness of the Greeks: Ant. Rom. ii. 17. Claudian de Sec. Cons. Stilich. v. 150—3, says of Rome:—

"Hæc est in gremium victos quæ sola recepit,
Humanumque genus communi nomine fovit,
Matris, non dominæ, ritu; civesque vocavit,
Quos domuit, nexuque pio longinqua revinxit."

† See Gellius ubi sup. Towns established by the Romans in the provinces appear to have been called colonies, rather than muni-

It may be observed, with respect to the extension of the rights of Roman citizenship to the provinces under the empire, that it did not then imply the important consequences, or produce the practical difficulties, which flowed from the grant of the rights of Roman citizenship to the towns of Italy, by the Julian law, during the Social war.*

The most important right conferred upon the freemen of the Italian cities after the Social war was the *suffragium*, or right of voting in the general assembly of the Roman citizens. Inasmuch as the general assembly of the Roman citizens was only held at Rome, and as no citizen could give his vote otherwise than in person, it was necessary that every inhabitant of an Italian city should, in order to exercise his Roman suffrage, repair to Rome. At first, all the Italians were distributed into eight new tribes, in order that their votes might be nullified by the preponderating numbers of the thirty-five purely Roman tribes; but when Cinna promised to distribute the Italians equally through all the tribes,

cipia, according to the ancient analogy. Thus Camulodonum, in Britain, was a colonia, where the lands had been divided among retired soldiers; Londinium likewise was a colonia; whereas Verulamium was a municipium: Tacit. Ann. xiv. 31, 33. The Colonia Agrippinensis on the Rhine still preserves its name in the modern Cologne. On the inaccurate use of the name *municipium* under the empire, Roth, p. 26; and see Gibbon, c. 2. (vol. i. p. 48.)

* For an able statement of the causes of the Social war, (including an exposition of the ancient system of subject allies,) see Encycl. Metropolitana, Divis. 3, vol. ii. p. 115—8, by Dr. Arnold.) Compare likewise Heyne, De Belli Romanorum Socialis Caussis et Eventu, respectu ad bellum cum coloniis Americanis gestum habito (written in 1783,) Opuscula, vol. iii. p. 144.

a vast multitude was (we are told) attracted to Rome from the whole of Italy.* It was the want of the modern contrivance of political elective representation, and the consequent necessity of every citizen giving his suffrage in person, which rendered the continuance of a republican government in Rome impossible, after the rights of Roman citizenship had been extended to the Italian cities. Even if no animosity had existed between the old Roman citizens and the Italians newly admitted to the rights of Roman citizenship, it was impossible that the republic should endure, comprehending, as it did, the chief part of Italy, and governed by citizens who could only give their suffrage in the general assembly at Rome. Accordingly, the interval between the Social war and the empire is filled with internal confusion and discord;† and the system which the Julian law was intended to create, never could be consolidated. Italy, after it had been conquered by Rome, might, according to the ancient systems of government, have been governed in one of two ways. The Italian towns might either have been a cluster

* Cum ita civitas Italiæ data esset, ut in octo tribus contribuerentur novi cives, ne potentia eorum et multitudine veterum civium dignitatem frangeret, plusque possent recepti in beneficium quam auctores beneficii, Cinna in omnibus tribubus eos se distributurum pollicitus est. Quo nomine ingentem totius Italiæ frequentiam in urbem acciverat. Vell. Paterc. ii. 20. Compare Appian de Bell. Civ. i. 49.

† The Social war began in 90 B.C. and Julius Cæsar was then ten years old, having been born in 100 B. C. His uncle was consul in the year of the tribuneship of Drusus, which preceded and produced the Social war.

of dependencies around the dominant city of Rome and its territory, like the dependent Laconian communities around Sparta, and the Libyan dependencies around Carthage; or the whole of Italy, Rome included, might have been directly subject to a monarchical government established in Rome. The consequences of the Social war had rendered the former of these modes of government impossible; and had therefore necessitated the adoption of the latter. By the establishment of the Imperial government, (which was monarchical in substance, though not in form,) the freeman of Mantua or Capua, although he was a Roman citizen, was relieved from the necessity of going to Rome, in order to exercise his suffrage there; and he was virtually equal in rights to the citizen of Rome, because the latter was substantially deprived of the suffrage which the former could not conveniently exercise. Accordingly, when the Emperor Claudius advised the senate to confer the full rights of Roman citizenship upon the Transalpine Gauls, it was easy for him to represent this extension of political rights to an excluded class, as a liberal concession, analogous to the equalization of the political rights of the plebeians with those of the patricians in ancient times.* But the patricians and plebeians inhabited the same city, and the latter could easily exercise their rights as citizens,

* Omnia, P. C., quæ nunc vetustissima creduntur, nova fuere: plebei magistratus post patricios, Latini post plebeios, ceterarum Italiæ gentium post Latinos. Inveterascet hoc quoque; et quod hodie exemplis tuemur, inter exempla erit. From the speech of the Emperor Claudius in Tacit. Ann. xi. 24.

in person; whereas the communication of the rights of Roman citizenship, as they existed in the time of the contests between the patrician and plebeian orders, to the Transalpine Gauls, would have rendered the conduct of the government impossible.*

In like manner, the Roman citizens who were sent out as colonists were probably not at first intended to be placed in a condition politically inferior to that of their fellow-citizens whom they left behind at Rome. But the impossibility of their exercising their Roman suffrage without ceasing virtually to be resident in their colony, gradually led to the exclusion of the colonists from the public rights of Roman citizenship.† It is only by means of representative institutions that a large tract of country can (as in England, France, and the United States) be subjected directly to a popular government. The chief advantage of representative institutions is, that they render it possible for a popular government to act directly upon a large territory, and thus enable it to avoid the recurrence to a system of dependencies.

During the reign of Constantine, a systematic re-division of the provinces of the Roman empire, and a fresh adjustment of the powers and rank of the provincial governors, were made.‡ The financial and judicial were severed from the military powers,

* See note (K) at the end of the volume.
† See Hopfensack, p. 146, 7.
‡ Gibbon, Decline and Fall, c. 17.

and were conferred on a double set of functionaries. Moreover, an attempt was made, by an improved system of posts, and frequent missions of official inspectors, to exercise a more efficient control over the provincial governors.* By this time, the influence of the Roman military, administrative, and judicial systems had been sensibly felt in the provinces, and the Roman language, institutions, and law had gradually superseded those of the natives. The scientific cultivation of law by the Roman jurists, the vast superiority of the Roman jurisprudence to that of all other nations, including the Greeks,† and at a later period, the digestion of the Roman law into codes, naturally led to its adoption throughout the provinces. It may be added that, in the age of Justinian, it was customary for the civil governors of provinces to receive a legal education in the Roman schools.‡ But notwithstanding the uniformity of the legal system thus introduced throughout the Roman empire, the provinces always retained subordinate governments, and consequently their character of dependencies; and the

* Gibbon, ibid. (vol. ii. p. 307, 8vo.)

† Cicero de Orat. i. 44. Quantum præstiterint nostri majores prudentia cæteris gentibus, tum facillime intelligetis, si cum illorum Lycurgo et Dracone et Solone nostras leges conferre volueritis. Incredibile est enim quam sit omne jus civile, præter hoc nostrum, inconditum ac pæne ridiculum.

‡ Justinian concludes the proem of his Institutes with the following exhortation to law students. "Summa itaque ope et alacri studio has leges nostras accipite, et vosmet ipsos sic eruditos ostendite, ut spes vos pulcherrima foveat, toto legitimo opere perfecto posse etiam nostram rempublicam *in partibus ejus vobis credendis*, gubernari." See Gibbon's full explanation of this point, ib. p. 287.

local councils of decurions, which the provincial towns had received in imitation of the municipia and colonies of Italy, were the origin of the free towns of the middle ages.

§ 2. Dependencies of the European States in Modern Times.

It will be unnecessary for me to adduce as copious examples of modern as of ancient dependencies; partly because the dependencies of the modern European states are better known, and partly because their characteristic peculiarities will be more often adverted to in subsequent parts of this Essay.

Feudal dependencies.

The governments which arose in Europe upon the ruins of the Roman empire, though widely different in most respects from the system to which they succeeded, resembled it in being, to a great extent, aggregates of dependencies. In the feudal kingdoms, a greater baron or feudatary possessed political powers so extensive that they virtually rendered him the head of a subordinate government. He usually possessed the power of administering justice, of maintaining public order, and of collecting taxes for public purposes; and the exercise of these powers naturally involved the exercise of a power of subordinate legislation. By convening his court, he could make a law binding his vassals, provided that it was not inconsistent with the terms of his infeudation.* The tribute which

* "Le propriétaire d'un grand alleu ou d'un grand bénéfice, entouré de ses compagnons qui continuaient de vivre auprès de lui, des colons, et des serfs qui cultivaient ses terres, leur rendait la justice en qualité de chef de cette petite société; lui aussi tenait dans ses domaines une sorte de plaid où les causes étaient jugées, tantôt

he yielded to the king was in general rendered in military service; although a direct payment was sometimes made.

His power of administering justice, and his power of subordinate legislation involved in it, naturally led to the formation of a separate system of law in the territory included in his fief; thus in France, the provinces retained different systems of jurisprudence, even after the powers of the great feudataries had been absorbed by the crown. It was only when the king had encroached on the jurisdiction of the great feudataries, and had brought their rere-vassals into more immediate relation with himself, by means of his judges and other officers, that the greater feudal dependencies became directly subject to the supreme government.

Another important class of dependencies in modern Europe arose from the reduction of several independent states under the dominion of the head of another independent state, by means of inheritance, marriage, or conquest.

European dependencies of Spain.

The most remarkable of these for their extent, political importance, and distance from the dominant country, are the European provinces of the Spanish monarchy, as they existed in the sixteenth century;

par lui seul, tantôt avec le concours de ses hommes libres . . . Ainsi, dans chaque localité, les pouvoirs individuels, inhérents au domaine, existaient à côté des pouvoirs publics, émanés de la délibération commune. Le propriétaire gouvernait et jugeait dans ses terres aussi bien que les hommes libres dans l'assemblée de la centène ou du comté." Guizot, Essais sur l'Histoire de France, Essai 4, ch. 3, (p. 253.)

namely, the kingdoms of Naples and Sicily, the duchy of Milan, and the Netherlands. These provinces were not strictly dependencies of Spain, but were, in form, independent kingdoms whose king was likewise king of Spain; so that they must, if the form of their institutions be alone considered, be treated as communities having a common head, but not belonging to the same empire.* But the relation in which they stood to the Spanish government was such, that in practice they approximated closely to dependencies.

These countries were too distant from the centre of the Spanish government to admit of being governed directly by the king. Accordingly, each of them was placed under a Spanish governor, (called a viceroy in Sicily and Naples,) possessing the ample delegation of powers proper to a subordinate government.† The powers of the Sicilian viceroy were limited in practice by the ancient feudal constitution of the island;‡ but in Naples the elements of resistance among the native population were weak, and the foreign viceroy had an

* See above, p. 90.

† See Giannone, Storia di Napoli, xxx. 2—5. The following form of the delegation of powers to a viceroy of the king of Spain, at Naples, is cited by Ranke: "I take you from my right side, and send you as my *alter ego* into my kingdom of the hither Sicily; I give you supreme and inferior jurisdiction, pure and mixt dominion, and the power of the sword; I confer on you the authority of remitting punishments, legitimating bastards, making knights, granting feuds and bishoprics, and even of doing those things whereto the king's presence is properly requisite." Fürsten und Völker von Süd-Europa im sechszehnten und siebzehnten Jahrhundert, vol. i. p. 286. (ed. 2.)

‡ See Ranke, ubi sup. p. 257. and Leo, Geschichte von Italien, vol. v. p. 28—31, from Gregorio.

almost unlimited sway.* In the duchy of Milan, likewise, the municipal institutions of the towns at first placed some check upon the powers of the Spanish governor; by degrees, however, he became absolute, and on account of the frequent wars in which Northern Italy was involved, the military element of the government preponderated over the civil, and thus gave it a harsh character.† In the Netherlands, the political powers possessed and exercised by the provinces and towns were more extensive,‡ and the spirit of the people was more active and independent. The separation of a large part of the Netherlands from Spain in the sixteenth century is well known to have been mainly owing to the attempt of Philip the Second to force the Catholic religion upon the Protestant portion of the people. Nevertheless, the spirit of resistance engendered by his religious persecutions was much fomented by the discontent at the employment of Spaniards in the country, and by the fear of the nobles that their importance might be extinguished under the Spanish influence.§

Each of these countries paid a considerable tribute to Spain, in addition to the maintenance which they furnished to the Spanish troops quar-

* Ranke, ubi sup. p. 277. To the Neapolitan viceroy was associated a council, styled *Conseglio collaterale*, which was composed of two Spanish and one Neapolitan member: Ranke, p. 282. No appointment to offices was made against the recommendation of the viceroy. The best offices were given to Spaniards: Ranke, ibid.

† Ranke, p. 304. 209. Leo, vol. v. p. 467—70.

‡ Ranke, p. 314—6.

§ Ranke, p. 321.

tered upon them.* The public revenue which they produced was probably considered the main advantage which they afforded to the Spanish monarchy. Thus the annual tribute of the Netherlands often amounted to a million and a half of ducats. "The Netherlands (said a Venetian ambassador) are the real treasures, and mines, and Indies of the King of Spain."†

The Spanish provinces which we have been considering retained their native systems of private law unchanged, and the ordinary courts appear to have been composed of native judges. Even in Naples, which remained for the longest time dependent upon Spain, the legislation of the viceroys does not seem to have been considerable, or to have had for its object the introduction of any of the peculiarities of the Spanish legal system.‡

The relation of the Spanish dependencies in Europe to the dominant country bears some analogy to the relation of the Roman provinces to Rome. The absolute military governor, the military character of the government, the existence of an ancient native civilization, and the maintenance of the native law under the foreign government, form obvious points of resemblance. The Spaniards, however, did not possess that power of perceiving clearly, and of pursuing steadily, the

* Concerning the public revenue of the European dependencies of Spain, Ranke, p. 338—45. 365—9.

† "Questi sono li tesori del re di Spagna, queste le minere, queste l'Indie." Soriano, Relazione di Spagna, cited by Ranke, p. 359.

‡ See Giannone, xxx. 5.

important ends of political government, which made the Romans so formidable, but, at the same time, so useful to their subjects, and enabled them to exercise so pervading an influence over all their provinces.* If the kings of Spain had adopted the Roman policy of not interfering with the religion of the provincials, they might probably have retained for a considerable time their supremacy over the United Provinces, the most valuable dependency of the Spanish monarchy.

Dependencies of France under Napoleon.

Another system of dependencies in modern Europe, of a similar character, are the dependencies of France, which were created by the conquests of Napoleon Bonaparte; such as the kingdoms of Italy, Naples, Spain, Holland, and Westphalia, and the Confederation of the Rhine. These were nominally and in form independent states; but they were intended by Napoleon to be virtually dependent on his government, and were always so treated by him. Thus he informed his nephew, the Grand-Duke of Berg, that his first duty was to himself (Napoleon), and his second to France; and that all his other duties, including those to the country placed under his charge, were subordinate to these.† This declaration has been much censured: but it agrees with the almost universally received maxim for the

* Giannone, xxx. 2, justly objects to the comparison made by some modern writers between the Spaniards and the Romans; and shows that the latter governed their dependencies with far more leniency, equity, and wisdom, than the former.

† See Walter Scott's Life of Napoleon, c. 52. (Prose Works, vol. xiii. p. 332.)

government of dependencies, in postponing the interests of the dependency to those of the dominant country; and it only differs from that maxim in avowedly distinguishing between the interests of the dominant country and those of its ruler.

The system of French dependencies created by Napoleon was never consolidated, and therefore the mode of their government presents scarcely any characteristics which can be comprised in a general description. It may, however, be observed that the convenience of possessing an uniform system of written law led to the introduction of the French codes into several of those countries; and that in some of them, as in Holland, Belgium, and the territory now forming the Rhenish province of Prussia, these codes have been retained since the separation of those countries from France.

If Napoleon had been able to consolidate the system of French dependencies projected by him, he would probably have established a system closely resembling that of the Roman provinces. When we reflect on the differences between the state of the countries held in subjection by Rome, and the state of Europe at the beginning of the nineteenth century, this remark alone shows how little his plans of conquest and government were calculated for stability.

Modern dependencies for commercial purposes.

We proceed next to the consideration of the most important class of the dependencies of the modern European states; namely, those which have owed their origin to a spirit of commercial enterprise,

sometimes peaceable, and sometimes accompanied by a spirit of conquest.

The earliest dependencies of this class are those established by the maritime republics of Italy in the Levant. Although many of these settlements were fortified, and strongly defended, yet they were mainly intended to serve as factories, and to protect and facilitate the commercial intercourse of these republics with Asia and the countries lying to the north of the Black Sea.

Dependencies of Genoa.

During the short existence of the Latin empire of the East, the Venetians, Genoese and Pisans had factories in Constantinople, which obtained a separate political existence, and were governed, to a considerable extent, by their own magistrates. At the return of the Greek Emperor, Michael Palæologus, in 1261, the Venetians and Pisans were allowed to preserve their respective quarters; but to the Genoese, on account of their superior power and services to the Emperor, was assigned the suburb of Galata, or Pera, on the opposite side of the harbour.* The Genoese at Galata retained all the characteristics of a Genoese colony; but they acknowledged their subjection and allegiance to the Greek Emperor.† After a time, however, they threw off their dependence upon the Greek empire,

* Gibbon, Decline and Fall, c. 62. (vol. viii. p. 15.) Leo, ubi sup. vol. iii. p. 34. Gibbon considers Galata and Pera as different names of the same place; at present, these names designate different, though contiguous, places.

† Gibbon, ib. p. 67.

and, with the assistance of the Venetians, even defeated the Emperor Cantacuzenus in a sea-fight, within sight of his own city.* The political subordination of Galata to its mother-country seems to have been always maintained. An annual Podestà was sent out from Genoa, whose election was subject to the same restrictions as the elections of the chief officers of Genoa itself. The local government of the *comune* was vested, under the real or nominal supremacy of the Greek empire, in this Podestà, together with a *consiglio*, after the manner of an Italian republic. There were numerous regulations respecting his duties; and the government of Galata was generally bound to observe the statutes of Genoa. The power of altering the laws imposed on it by the supreme government of Genoa was not conferred upon the subordinate government of the colony.† The Genoese, likewise, possessed other factories in the Black Sea, particularly Kaffa, in the Crimea, which they bought from a Tartar chieftain in the beginning of the fourteenth century.‡ The local government of Kaffa was permitted to change the laws imposed on it by Genoa, without previously obtaining the consent of the Genoese government to the change; a latitude which was probably

* Gibbon, Decline and Fall, c. 62, p. 70—4.

† Sauli, Della Colonia dei Genovesi in Galata, tom. ii. p. 10—31. (Torino, 1831.) Gibbon, p. 70, treats Galata as virtually independent both of the Greek empire and of the mother-country; but this does not seem to have been the case with respect to the latter at least.

‡ Sismondi, Hist. des R. I. ch. 40. (tom. vi. p. 93.) Leo, vol. iii. p. 462.

allowed to it on account of its distance and its dangers.* These important settlements and factories remained in the possession of Genoa, until the taking of Constantinople by the Turks, when they all fell under the Mussulman power.†

Venetian dependencies.

The Venetians, by the fourth crusade, acquired a portion of the divided Greek empire, and a district of Constantinople. At the same time they likewise acquired Candia by purchase; and although they afterwards lost their power in Constantinople, they made conquests, and established colonies and factories in the Black Sea, the Propontis, the Archipelago, the Morea, the coast of Syria, Cyprus, and the coasts and islands of the Adriatic.‡ Venice, and the other Italian republics, commenced, even before the Turkish conquest, the practice of establishing commercial factories in the cities of the Levant. These were separate walled precincts,§ (like those once assigned to the Jews in the European towns,)‖ in which the foreign merchants lived with their families, and were governed by magistrates of their

* Sauli, tom. ii. p. 30, 31.

† Sauli, tom. ii. p. 176. The last possession of Genoa in the Levant was the island of Chios, which was under a sort of proprietary government belonging to the Giustiniani family: Sismondi, tom. iii. p. 318.

‡ Leo, vol. iii. p. 16, 17, 27—30. Daru, Hist. de Venise, liv. xix. § 10.

§ These factories, from having been originally little more than landing places, were called *scale* by the Italians, and afterwards *échelles* by the French.

‖ The Jews' quarter was called *ghetto* by the Italians, which word was derived from the German *gitter;* the Jews having been enclosed by a barrier drawn across the ends of the streets assigned to them.

own, according to their own laws. They resemble very closely the Portuguese factory at Macao, and the English factory at Canton; only that in the latter, the jealousy of the Chinese never allowed women to be introduced, and consequently, prevented the permanent foundation of a settlement from being laid.* The treaty of the Venetians with the Emperor Michael, in 1264, contained a stipulation that the Venetians at Constantinople and other cities of the Greek empire were to retain their own courts, with further definitions of the relations of these to the native tribunals.† Similar stipulations as to the allowance of a Bailo with jurisdiction, to the Venetians, were contained in treaties made with the Sultan in 1454 and 1479.‡ The system thus introduced has given rise to the singular practice of the European ambassadors and consuls exercising a criminal, and sometimes a civil jurisdiction over their fellow-countrymen in the Mahomedan countries in the Levant and Barbary; and of withdrawing them from the native tribunals, by virtue of treaties made at different times with the Porte.

* Strabo, iii. c. 4, states that the republic of Massilia founded on the coast of Spain a settlement named Ἐμπορεῖον ("the factory"), and that the Emporitæ, having first occupied an island off the coast, afterwards moved to the mainland, where they and the Indicetæ (a native Spanish tribe) dwelt in a city within a common wall, but forming two distinct political communities, and divided by a wall from one another. This is probably the earliest example of a factory constituting a part of a town: but it differs from the factories mentioned in the text, in that the Emporitæ probably were independent both of their mother-country, and of the people of the country which they occupied. Compare Livy xxxiv. 9.

† Leo, vol. iii. p. 35, 36. Compare p. 49.

‡ Leo, vol. iii. p. 162, 182.

The Venetian colonial dependencies were, to a certain extent, organized after the pattern of the mother-country.* It was the object of the republic to induce its citizens to settle in Greece, and it granted fiefs to its nobles in different places with this view. The isle of Candia was colonized by Venetians in 1212; the land was divided into three parts, of which one part was reserved to the republic, one part was granted to the church, and a third part was subdivided into five hundred grants to the Venetian adventurers, to be held upon condition of their performing military service.†

"The island was presided over by a government, having an organisation similar to those in the other foreign possessions of Venice. The entire body of the Venetian nobili, and their descendants, formed the great council of the island; at the head of which was the duca (or doge), assisted by two councillors. The doge was originally appointed for a longer time; but afterwards held the office only for two years. Two avogadori, two camerlenghi, and a massaro, (the latter of whom was always a Venetian colonist, and was destined for the control of the camerlenghi,) discharged the administrative offices. There was also a number of judicial officers, all of whom were likewise required to be colonists. The feudal cavalry was commanded by a proveditore, and the entire military force by a captain-general."‡

* Leo, p. 17, 18. See Daru, tom. i. p. 184.

† Leo, p. 21.

‡ Leo, p. 22.

The native Greek population of Candia often rebelled against the Venetian government;* but in 1361, a rebellion of the Venetian colonists themselves took place, for the purpose of throwing off the yoke of the mother-country. The colonists refused to pay a tax imposed upon them for the maintenance of the harbour of the city of Canea, and demanded that some of them should sit as representatives in the great council of Venice. But these pretensions, and the attempts to enforce them, were soon suppressed by a Venetian army.†

It was the policy of Venice to encourage the members of her noble families to migrate to the colonies for the purpose of enriching themselves; and to adopt the families thus enriched into the highest order of nobles.‡ It was only by a system of the strictest control over the governors of the ultra-marine dependencies, that Venice maintained them in subjection to her; and the supreme government, in order to avoid giving any unnecessary offence to its governors, was induced to overlook their oppressions of the people placed under their immediate rule.§ Accordingly, the Venetian empire never was firmly consolidated; and although the Dalmatian coast and the Morea were at no great

* See Daru, tom. i. p. 354.

† Leo, p. 85—7, who remarks the analogy with the grievances and claims of the North American colonies of England, before their war of independence.

‡ The Venetians are stated to have deliberated in 1225, about transferring the seat of their government to Constantinople: Sismondi, ch. 20. (tom. iii. p. 301.)

§ Leo, p. 68. 194, 5.

distance from the seat of the supreme government, the dependent parts, like the subjects of Carthage, Athens, or Sparta, always remained a loose aggregate of communities, ready to fall to pieces at the first blow.*

* The following is M. de Sismondi's account of the policy of the Venetians towards their dependencies:—"Ils ne considérèrent jamais leurs possessions du Levant comme des parties intégrantes de leur état; ils ne les gouvernèrent jamais de manière à les faire fleurir; ils ne les défendirent jamais de manière à les sauver; ils n'assurèrent jamais aux peuples ce dégré de prospérité et de paix, qui auroit attaché leurs sujets à la république, qui leur auroit concilié l'affection de leurs voisins, et qui les auroit fait reconnoître pour les alliés et les défenseurs naturels de tous les Chrétiens soumis aux Turcs." ch. 80. (tom. x. p. 261.)

After having stated that the Venetian republic, in later times, was formed of three classes; 1st, the dominant Venetians; 2d, the subject Italian communities of the terra firma; and 3d, the Levantines and other foreign subjects, he makes the following remarks on the 3d class:—"Enfin les habitans des provinces situées au-delà des mers formoient une troisième classe, méprisée, opprimée, et toujours sacrifiée aux deux autres. Leurs ports étoient des marchés réservés aux seuls Vénitiens, où ils exerçoient, sans rivaux, un odieux monopole; leurs forteresses devoient contenir leurs sujets dans la crainte, et assurer la domination de la mer Adriatique; mais elles ne couvroient point les frontières, et ne protégeoient point l'agriculture et la paix dans une enceinte inviolable; leurs milices n'étoient point régulièrement armées; les soldats, levés dans ces pays si guerriers, n'étoient point incorporés avec le reste de l'armée Vénitienne; ils étoient repoussés au dernier rang de l'établissement militaire." ib. p. 262.

M. de Sismondi proceeds to remark that, considering the extent of her ultramarine possessions, Venice ought to have aimed at being an Illyrian rather than an Italian power, and to have formed a compact empire of her Illyrian, Albanian, and Greek subjects. "Mais les états les plus sages (he adds) sont eux-mêmes souvent conduits par leurs préjugés bien plus que par leur jugement. Chacun des agens de l'autorité partageoit les préventions nationales contre tous les sujets levantins de la république. Tous les Grecs étoient estimés faux et corrompus, tous les Illyriens, barbares. Le Vénitien se seroit senti humilié, s'il avoit été confondu avec de semblables hommes. Il ne pouvoit s'affectionner à ces possessions lointaines; jamais il n'y faisoit d'établissement durable, jamais il ne vouloit y

But, as soon as the invention of the compass, the circumnavigation of Africa, and the discovery of America, had given a mighty impulse to distant mercantile enterprise, the civilized commercial world was no longer nearly confined to the Mediterranean; the ancient communications of trade were abandoned; and new fields of colonization and conquest were opened beyond the ocean.

American dependencies of Spain.

As the expedition which discovered America was a Spanish expedition, the Spaniards naturally became the first colonizers of America. Having easily subdued the half-civilized natives, they established a government which was entirely conducted by Spaniards, and was strictly dependent upon the Spanish monarchy.* The main advantage which Spain originally expected to obtain from her American colonies consisted in the revenue derivable from their gold and silver mines.† To this source of profit was subsequently added the supposed advantages of her monopoly of the colonial trade.‡ The latter system appears to have been mainly of Spanish origin, though it had been previously introduced by the Venetians into their colonies in the Levant; and, at all events, it was carried to a

être considéré autrement que comme un étranger. Il y venoit pour faire sa fortune; dès qu'elle étoit faite, il se hâtoit de l'emporter ailleurs." Sismondi, tom. x. p. 263.

* Robertson's History of America, book viii.

† Robertson, ib. vol. vii. p. 359. (ed. Oxford.)

‡ Robertson, p. 333—6. 385. 388. The Spanish dependencies were not only prohibited from trading with foreign countries, but also with one another. Several branches of manufacture, and the culture of the vine and olive, were prohibited in them. The Romans, in like manner, prohibited the culture of the vine and olive in Transalpine Gaul, in order to increase the prices of the wine and oil produced in Italy. Cic. de Rep. iii. 9.

greater extent, and persisted in with greater obstinacy, by Spain, than by any other country. The supposed advantages arising from these two sources could only be secured by maintaining the American colonies of Spain in a state of strict dependence upon the mother-country. Accordingly, the principle of the supremacy of the Spanish monarch in Spanish America was strongly asserted.* The ultimate property of the soil was held to reside in him, and all public officers were regarded as acting by his authority. The two viceroys who represented the king of Spain in his Spanish dominions possessed as ample powers as was consistent with their being merely the heads of a subordinate government.† But, considering the distance of America from Spain, and the imperfection of the arts of navigation and war in the sixteenth century, it is probable that the Spanish colonies in America would have become independent in no long time

* Robertson, p. 327, 328, 304. The king of Spain and not the pope was supreme in ecclesiastical matters in the American colonies: ib. p. 348, 9.

† "Those viceroys not only represent the person of their sovereign, but possess his regal prerogatives within the precincts of their own governments, in their utmost extent. Like him, they exercise supreme authority in every department of government, civil, military, and criminal. They have the sole right of nominating the persons who hold many offices of the highest importance, and the occasional privilege of supplying those which, when they become vacant by death, are in the royal gift, until the successor appointed by the king shall arrive. The external pomp of their government is suited to its real dignity and power. Their courts are formed upon the model of that at Madrid, with horse and foot guards, a household regularly established, numerous attendants, and ensigns of command, displaying such magnificence, as hardly retains the appearance of delegated authority." Robertson, p. 329. All important offices in the Spanish colonies were filled by Spaniards; even persons of Spanish origin, but born in America, were excluded: ib. p. 339.

after their foundation, had it not been for the Royal council of the Indies. This council had, under the king, the chief authority over all matters concerning the government of the Spanish colonies in America. Its power extended to all departments, as well legislative as executive; and all public officers in America were appointed by and accountable to it.* The establishment of the council of the Indies may be considered as the earliest attempt to exercise constantly a vigilant control over the subordinate governments of dependencies, by means of a separate public department in the dominant country.

A considerable body of laws peculiar to the Spanish colonies in America was gradually formed by the legislation of the council of the Indies and of the American viceroys; which have been collected and published under the title of *Recopilacion de Leyes de los reynos de las Indias.*†

It has been recently shown by authentic evidence, that the only solid advantage which Spain was supposed to have derived from her American colonies, (namely, the produce of the tax upon the mines of gold and silver,) has been greatly exaggerated.‡ On the results of her system of colonial monopoly, we shall make some remarks lower down.§

Dependencies of Spain and other nations in the West Indies.

The tropical regions of the mainland of America remained in the undisturbed possession of the Spaniards; but many of the West India islands were subsequently taken and colonized by the

* Robertson, p. 332.

† Published at Madrid, 1774, in 4 vols. folio.

‡ Ranke, p. 351—9. Compare Robertson, p. 400.

§ Below, ch. VI.

Dutch, the Danes, the French,* and the English. The native population of these islands having become extinct, a working class of slaves was formed in them by the importation of African negroes. The culture of sugar, as well as of coffee and other products suited to a tropical region, was also introduced into them, and followed on a large scale. In this manner, an uniform system of society was established throughout the West India islands; which, at the same time, obtained a great value in the estimation of European governments, on account of the large quantity of their products. Every European government which acquired a West India island, studied, in imitation of the Spanish policy, to monopolize its trade. The regulations for effecting this purpose were necessarily similar; but the local institutions varied according to the government of the dominant nation. Thus the French administered their islands by governors and intendants, without any popular control; whereas in the islands dependent upon England, the power of the governors and their councils was checked by popularly elected houses of assembly.

In addition to the Spanish settlements on the mainland of America, and to the settlements in the West India islands which have been just mentioned, colonial dependencies connected with commercial objects were established by the Portuguese, the Dutch,† and the French, in the three other quarters

* An account of the proceedings of the Dutch, the Danes, and the French in the West India islands, may be seen in Raynal, b. xiii.

† The history of the Portuguese and Dutch settlements in the East Indies has been written by Saalfeld: Geschichte des Portu-

of the globe. But the most important dependencies belonging to this class are comprised in the dominions of the crown of England. A brief view of the British empire, and of the manner in which it has been formed, will throw additional light on the nature of commercial dependencies, and will also illustrate the process by which a single nation may gradually become the head of a large empire.

English dependencies.

In the reign of Queen Elizabeth, the territory directly subject to the English crown and parliament was as yet limited to England and Wales. Scotland was still an independent kingdom, having its own king and houses of parliament. Even at the death of Elizabeth, when the crowns of England and Scotland were united, the kingdom of Scotland retained its independence; which lasted until Scotland became, by the union of 1707, directly subject to the supreme government of Great Britain. England, moreover, possessed some considerable dependencies in the reign of Elizabeth. These were Guernsey, Jersey, and the other small islands in St. George's Channel, which had been parcel of the duchy of Normandy; the Isle of Man, which had once been dependent upon the kings of Norway, and afterwards upon the kings of Scotland; and, lastly, Ireland. The conquest of Ireland by Henry the Second, and its subsequent colonization from England, established its subjection to the English crown. It continued, however, to be considered a distinct

gischen Kolonialwesens in Ostindien (Göttingen, 1810, 1 vol. 12mo.,) and Geschichte des Holländischen Kolonialwesens in Ostindien (Göttingen, 1812, 13. 2 vols. 12mo.)

kingdom, though (as Blackstone says)* a dependent subordinate kingdom, the crown of which belonged to the King of England for the time being. The King of Ireland, together with the Irish Houses of Parliament, formed the peculiar government of Ireland; which was subordinate to the government of England, consisting of the King of England, together with the English Houses of Parliament. The English parliament could accordingly legislate for the internal affairs of Ireland. As commonly happens in similar cases, it rarely exercised this power; but, in order to restrain the Irish parliament in the exercise of its power of subordinate legislation, the English government had carried an act through the Irish parliament, which prohibited the introduction of any bill into that parliament without the permission of the king in council.† Ireland continued (in the words of the statute of 6 Geo. I., c. 5) "subordinate to and dependent upon the imperial crown of Great Britain;" and "the king with the consent of the Lords and Commons of Great Britain in parliament had power to make laws binding the people of Ireland," until the year 1782, in which, and the succeeding year, the British parliament surrendered its sovereignty over Ireland. During the eighteen years which followed 1782, Ireland was, legally, an independent state, the king of which was also king of Great Britain; and its political relation to Great Britain was precisely similar to that which subsisted between England and Scotland in the in-

* Commentaries, vol. i. p. 99.

† Poyning's Act.

terval between the union of the two crowns and the union of the two kingdoms. In the year 1800, the subordinate government of Ireland was extinguished by its own act; and in pursuance of a compact with Great Britain, Ireland became immediately subject to a newly created body, exercising the sovereignty of the United Kingdom of Great Britain and Ireland.*

In consequence of the Scotch and Irish unions, the whole of the British islands have become immediately subject to a common government, with the exception of the Channel islands, and the Isle of Man, which continue to be governed as dependencies under that government.

But, besides the territories near the seat of her supreme government, England gradually acquired many distant territories which she necessarily governed as dependencies. The earliest of these distant dependencies which England acquired, were the colonies established by Englishmen in North America. Some of these, as Virginia and the Carolinas, were cultivated by planters, with a view to mercantile profit, nearly in the same manner in which the West India islands were cultivated. Others, as the New England colonies, were founded by Puritans, who sought an asylum from the persecution of the Church of England, in the reign of Charles the First; and were, therefore, unconnected with commercial enterprise. The settlements of the English in the West India islands likewise commenced about the same time. Jamaica was acquired by England

* See note (L) at the end of the volume.

during the Protectorate; but its colonization and the establishment of its subordinate government date from the beginning of the reign of Charles the Second.* All the English colonies established in America and the West India islands, during the seventeenth, and the beginning of the eighteenth century, received a representative constitution, imitated, for the most part, from that of the mother-country. They were permitted to manage their own taxation and other internal affairs, with scarcely any interference from the English government; but their trade with England, the other English dependencies, and with the rest of the world, was subjected to numerous restrictions imposed by acts of the English parliament for the purpose of benefiting the English traders.

Following the example of the Portuguese, the Dutch, and the French, the English attempted to carry on their trade with the East Indies by means of a Company. The English East India Company, which commenced its operations by establishing a few factories in Hindostan, with the consent of the native princes and upon their territory, has ultimately come to form the chief member of the subordinate government, which, under the British parliament, rules the vast regions on the continent of

* An attempt was made in 1678, during the governorship of the Earl of Carlisle, to fetter the Jamaica House of Assembly with a regulation similar to that imposed upon the Irish House of Parliament by Poyning's Act. The attempt was defeated by the resistance of the House of Assembly.—See Long's History of Jamaica, vol. i. pp. 11, 15, 197, 208. His Appendix (B.) pp. 195—213, contains a detailed and highly interesting account of the proceedings of the Assembly.

Asia, now, directly or indirectly, dependent upon England.

In later times, England has established dependent colonies, for certain peculiar purposes different from any of those hitherto enumerated. Such are Sierra Leone and other stations established on the coast of Africa for the purpose of checking the Slave Trade; and Sydney in Australia, which was established in 1788, as a settlement for the reception of convicts from England, in consequence of the North American colonies, to which convicts had been previously transported, having then recently become independent.

England likewise possesses some distant dependencies in Europe, which it holds partly for military and naval, and partly for commercial purposes. The chief of these are Gibraltar and Malta.

We will close this general survey of the British dependencies, with a short statement of the natures of their governments, and of the political relations subsisting between them and the dominant country.

The sovereign government of the United Kingdom of Great Britain and Ireland (consisting of the Crown and the two Houses of Parliament) is supreme, for every political purpose, in every British dependency. All the dependencies of Great Britain have this in common, that they are bound by the acts of the British parliament. The subordinate government of every British dependency must therefore be considered as deriving its existence and its powers from the delegation of parliament, either express or tacit.

But, although all the British dependencies agree with one another in being subject to the British parliament, and although all their subordinate governments derive their existence and powers from the express or tacit delegation of parliament, they differ from one another in respect of the constitutions of their subordinate governments.

In some of the British dependencies the subordinate government of the dependency resides in the Crown exclusively;* so that there is not, either in the dominant country or the dependency, any subordinate authority having a power over the dependency co-ordinate with any of the powers which the Crown, as a subordinate authority, possesses over it. Dependencies belonging to this class are commonly known by the appellation of "Crown colonies."

In the other British dependencies, the subordinate government resides in the Crown conjointly

* The supremacy of Parliament (*i. e.* the Crown with the Houses of Lords and Commons) in a British dependency, and the subordination of the Crown, as exercising a delegated power over a dependency, to Parliament, are clearly stated by Lord Mansfield, in his celebrated judgment in the case of Campbell *v.* Hall, 20 Howell's State Trials, 239. "A country conquered by the British arms becomes (he says) a dominion of the king in right of his Crown; and therefore necessarily subject to the legislative power of *the Parliament of Great Britain*:" afterwards he adds: "If the king has power (and when I say the king, I mean in this case to be understood without 'concurrence of Parliament') to make new laws for a conquered country, *this being a power subordinate to his own authority, as a part of the supreme legislature in Parliament*, he can make none which are contrary to fundamental principles; none excepting from the laws of trade or authority of Parliament, or [giving] privileges exclusive of his other subjects." pp. 322, 323. By *fundamental principles* in the preceding passage, Lord Mansfield means those laws or rules of law made or sanctioned by Parliament, as the supreme government of a dependency, which the Crown, as the subordinate government, cannot alter.

with a body of persons in England or a similar body in the dependency; so that there is, in the dominant country or the dependency, a subordinate authority having, for some purposes, powers over the dependency co-ordinate with those which the Crown, as such subordinate authority, also possesses over it.

The subordinate government of the dependency resides in the Crown conjointly with a body of persons in England, in the case of the territories comprised within the charter of the East India Company. The subordinate government of these territories is exercised by the Crown and its appointees, conjointly with the body of persons forming the East India Company.

The subordinate government of the dependency resides in the Crown conjointly with a body of persons in the dependency,* when there exists in the dependency a body chosen by the inhabitants, without whose consent no law can be made by the Crown or its appointees. In dependencies of this class, the subordinate government commonly consists of the Crown with a governor and a legis-

* If the Crown once associates with itself in the subordinate government of a dependency, a body chosen by the inhabitants of the dependency, it cannot thenceforth legislate alone for such dependency: see Campbell *v.* Hall, cited in last note, where Lord Mansfield says: "We therefore think that by the two Proclamations and the Commission to Governor Melville, the king had immediately and irrevocably granted to all who did or should inhabit, or who had or should have property in the island of Grenada, in general to all whom it might concern, that the subordinate legislation over the island should be exercised by the assembly, with the governor and council, in like manner as in the other provinces under the king." p. 329.

lative council appointed by the Crown, and a house of assembly whose members are chosen by popular election.*

Up to the time of the American war, the colonies founded by Englishmen were generally placed under subordinate governments resting upon a completely democratic basis; and England was contented to allow the popular body in the dependency to manage its internal affairs according to their own liking, provided that the dependency submitted to the restraints which England imposed upon its trade for the sake of promoting her own imagined interest. Consequently, the relation between England and her American colonies up to the middle of the last century closely resembled, so far as the management of their internal affairs was concerned, the relation between a Greek mother-country and its colony; but the restraints which England imposed upon the commerce of these colonies were copied from the Spanish system. Since the close of the American war, it has not been the policy of England to vest any portion of the legislative power of the subordinate government of a dependency in a body elected by the inhabitants. The only exception to

* There is one British dependency, viz. British Guiana, which seems at first sight not to fall into either of the above classes. For in this dependency a share of the subordinate government is possessed by a body of representatives, who are chosen indirectly by the inhabitants; and yet the Crown legislates in it by orders in council; that is to say, without the consent of this body. But it is to be remarked that, although the governor of British Guiana cannot legislate without the consent of a body elected by the inhabitants, British Guiana is properly a Crown colony, inasmuch as the elective body is not co-ordinate with the Crown for legislative purposes.

this uniform course of policy is furnished by the Canadian provinces, whose subordinate government was partly vested in a house of assembly by an act passed in 1791. The Ionian Isles, whose subordinate government, likewise popular in form, was created in 1817, are formally rather an independent state under the protection of the British crown than a dependency of the United Kingdom.

Before we conclude this outline of the political relations of the English dependencies, it is necessary to remark that their government is materially influenced by the existence of separate departments in the dominant country, charged with the exclusive care of their political affairs.

The early English colonies were in practice nearly independent of the mother-country, except as to their external commercial relations; and there was scarcely any interference on the part of England with the ordinary management of their internal affairs. Accordingly, there was at that time no separate department of the English government, charged exclusively with the superintendence of the government of the dependencies; and the business connected with them, being chiefly commercial, was assigned first to a board, and afterwards, for a short interval, to a permanent committee of the privy council, which had the management of the affairs of "Trade and the Plantations."

The affairs of the plantations and other dependencies remained in the management of this department until the creation of a permanent third

secretary of state, in the year 1794.* The third secretary of state had the department of war, to which the management of the colonies was annexed. Since the peace of 1815, his department has been styled the Colonial Department; and all the English dependencies, except the Channel islands, with the Isle of Man, and the territories of the East India Company, are under his administration. Although the Secretary of State for the Colonial Department is still nominally the minister of war, the military and naval business is transacted by other departments of the government.

The home government of the territory belonging to the East India Company was, until the year 1784, vested exclusively in the proprietors and directors of that body, subject to the legislative power of parliament. In that year a government department was created by the name of the Board of Control, which was to be appointed by the Crown, and to exercise a supervision over the proceedings of the directing body of the East India Company. Before the establishment of the Board of Control, the Crown, as distinguished from the parliament, had no authority over the territories belonging to the East India Company: in other words, the Crown had no share in the subordinate government of those territories. It may be observed that, if a department having the special charge of the dependencies, similar to the

* A third Secretary of State, styled "The Secretary of State for the American Department," had existed from 1768 to 1782.

present Colonial Department, had existed in 1784, Mr. Pitt would probably have proposed to add to its functions the control of the proceedings of the East India directors. The creation of a separate Board of Control for the East India Company in 1784, and the subsequent formation and growth of the Colonial Department, have produced the singular anomaly of two departments in the dominant country superintending separately the governments of different portions of the dependencies.

While England has two public departments charged with the care of its dependencies, in France the management of the dependencies is attached to the ministry of marine, an arrangement which seems less convenient than that formerly existing in this country, by which the concerns of the plantations were annexed to the department of trade.

The ancient states had no public department or even functionary specially charged with the superintendence and control of the governments of the dependencies, and of the conduct of their respective governors. Such an institution would, however, have scarcely failed to ameliorate the government of the dependencies (whose misgovernment was the principal defect of the ancient systems of polity), and therefore to consolidate the empires of the great states, which, from the unwilling obedience of the subject communities, were always threatening to fall asunder. In Rome, for example, a department or officer of this sort could scarcely have failed to afford some protection to the provincials against the

oppressions of their governors, and generally to introduce improvements into the method of their administration. The industry and ability of Cicero would have been employed far more advantageously to the provincials, if he had filled an office of this sort, than they were in his prosecution of Verres. The constant supervision of a public department or officer, however much influenced it might have been by the sinister interests of classes or individuals in Rome, would have been far more efficacious in restraining abuses in the provinces, than the slight motive caused by the fear of an accidental prosecution, vigorously as such a prosecution might have been followed up in an individual case.

In later times, the Roman emperors employed certain agents (styled *agentes in rebus*) to visit the provinces and furnish the supreme government with information respecting their condition. These officers were moveable, and were not connected with any separate department in Rome. They appear to have been considered in the odious light of spies and informers; and they are accused of having ruined persons in the remote provinces by false accusations.*

The Spanish Council of the Indies was, as has been already remarked, the first example of a separate public department in a dominant country

* See Bergier, Histoire des Grands Chemins de l'Empire Romain, lib. iv. ch. 18 (tom. ii. p. 674). The *agentes in rebus* had extensive privileges respecting the use of the horses on the public roads. Concerning the functions of similar officers in ancient Persia, see Xen. Cyrop. viii. 6. § 16

for the management of dependencies. The maxims by which the Council of the Indies guided its policy were most pernicious to the colonies; moreover, its influence probably held those colonies in the strict dependence upon Spain in which they continued till near the period of their independence, and thus prevented them from taking measures for obtaining a better government. But as the maxims of government which it followed were those obtaining generally in the age and country, they were adopted, not invented, by it; and its influence in maintaining the dependence of the colonies, which proves the efficacy of its organization, was, to a certain extent, counterbalanced by the checks which it imposed upon the excesses of the local authorities. In particular, the Council of the Indies seems to have never authorized the oppressions and cruelties practised by the Spanish colonists upon the native Indians, but rather to have thrown over them the protection of laws which were not intended to remain a dead letter.*

If it be assumed that colonial and other dependencies are to remain in a state of dependence, it cannot be doubted that they, on the whole, derive advantage from the existence of a public department in the dominant country, specially charged with the superintendence of their political concerns. The existence of such a public department tends to diminish the main obstacles to the good government of a dependency, viz., the

* See Robertson, History of America, b. 8 (vol. vii. p. 346, 7).

ignorance and indifference of the dominant country respecting its affairs; and to supply the qualities requisite for its good government, viz., knowledge of its affairs and care for them. If the existence of such a department tends to involve the affairs of the dependency in the party contests of the dominant country, it is to be remembered that this very evil has its good side; inasmuch as the public attention is thereby attracted to the dependency, and the interest of some portion of the dominant people is awakened to the promotion of its welfare.

CHAPTER III.

On the Modes in which a Dependency may be acquired.

HAVING, in the preceding chapter, illustrated the general notion of a dependency by examples of dependencies as they have actually existed, we proceed to a consideration of some properties of a dependency which have not been fully explained in the first chapter.

The first subject which here requires examination is the means by which a dependency may be acquired.

§ 1. Acquisition by conquest or voluntary cession.

A dependency is sometimes acquired either by conquest, or by an express or tacit cession.

A dependency is sometimes acquired by conquest or treaty.

A dependency thus acquired may have been previously either dependent or independent.

Many of the dependencies of the ancient states became dependent by conquest, having previously been in a condition of independence. Such was the case with Egypt, Syria, Lydia, and other countries which were dependent upon the Persian kingdom; such also was the case with the islands of the Ægean Sea and the states of the coast of Asia Minor, which were dependent upon Athens; and such was the case with most of the dependencies of Carthage, in the western parts of the Mediterranean.

The provinces of the Roman republic were often acquired by a sort of treaty, to which the people were induced to submit by the fear of the Roman arms. In some cases Rome acquired a dependency by forming with a weaker state an unequal treaty, which, though it left the state nominally independent, deprived it virtually of its independence. Examples of the conquest of dependencies in ancient times are furnished by Sicily and Sardinia, which Rome took from Carthage, and annexed to her own dominions, before she reduced the Carthaginian republic itself. Examples of the transfer of dependencies from the possession of one state to another occur likewise in Greek history; but the most numerous and best known instances of this sort of transfer have taken place in modern times, when wars have frequently been carried on between European states respecting the possession of dependencies in America or Asia. Several of the dependencies of the European states in North America, and in the East and West Indies, have thus changed masters; and thus, for example, the French colonies of Canada and the Mauritius, the Spanish colonies of Jamaica and Trinidad, and the Dutch colonies of the Cape of Good Hope and Ceylon have passed into the hands of England.

It may be added that a portion of an independent state, not being itself a dependency of that state, but subject directly to its supreme government, may be conquered from it by another independent state, and be formed by that state into a dependency.

This is the case with Gibraltar, which was formerly an integral part of the Spanish monarchy, and is now a dependency of England. In like manner, a factory established on the territory of an independent state may, in the progress of time, cease to be dependent on the government of the state by whose permission it was originally established, and may become a dependency of the nation which established it.* This was the case with the factories established by the English East India Company on the territory of the Mogul.

§ 2. Acquisition by settlement.

A dependency is sometimes wholly or partially formed by emigrants, settlers, or colonists from an independent state, who establish a new community, having a government subordinate to the supreme government of that state. In this case the dominant community is also the metropolis or mother-country, and the dependency is also its colony. The Roman *coloniæ* and the colonies or plantations of Spain, Portugal, France, Holland, and England in America, Africa, Asia, and Australia, afford examples of this species of dependencies. The Greek and Phœnician colonies do not, as has been already stated, fall within the class of dependencies.

A dependency is sometimes formed by settlers from the dominant country.

As modern colonies have generally been dependencies of their respective mother-countries, and the terms "colony" and "dependency" have often been confounded in consequence, it will be convenient to

* See above, p. 93.

examine in this place the signification of the former term.

Meaning of the word colony.

The English word "colony" is derived ultimately from the Latin word *colonia*, the origin and meaning of which have been already explained.* A *colony* properly denotes a body of persons belonging to one country and political community, who, having abandoned that country and community,† form a new and separate society, independent or dependent, in some district which is wholly or nearly uninhabited, or from which they expel the ancient inhabitants.

It is essential to the idea of a colony, that the colonists should have only formed a part of the community which they have abandoned for their newly adopted country. If an entire political community changes its country for a time, and moves elsewhere, it does not found a colony: thus a roving tribe of Scythians or Tartars does not found a colony when it settles in the temporary occupation of a new district. So the Athenians, during the Persian invasion of Attica, when they embarked in their ships and took refuge in Salamis, were not a colony. Nor would they have been a colony, even if they had permanently changed their place of abode; for, when an entire nation changes its seats, and establishes itself permanently in another country, (as the

* Above p. 115, note †.

† The idea of an abandonment, by colonists, of their native country is contained in the Greek word ἀποικία.

Franks in France, the Lombards in Italy, or the Vandals in Africa,) it is not said to found a colony.*

It is likewise essential to the idea of a colony, that the colonists should have belonged to a common country. A new community formed of persons collected together from various states (in the manner in which the original body of the Roman citizens is reported to have been formed) would not be a colony of any one of those states. So the city of Thurii, which was formed, a few years before the Peloponnesian war, of settlers from all the principal states of Greece, was not a colony of any of those states.†

But in order that a community should be a colony of a certain country, it is not necessary that *every* member of the colony should have been derived from that country. It is sufficient for this purpose, that the bulk of the colonists or of the governing or free class in the colony should have been inhabitants of such country. Thus, in many of the Greek colonies, the Greek settlers found in the new territory a native population which they reduced to a servile condition, and the Roman colonies were little more than garrisons of Roman soldiers in conquered dis-

* See Heyne's Opuscula, vol. i. p. 294.

† Thurii was founded after the destruction of Sybaris, by the ejected remnant of the Sybarite people, together with settlers from Attica, and various states of Peloponnesus, and of other parts of Greece. In a few years, the Sybarites were driven out, and the people of Thurii were formed into ten tribes, of which the names designate the constituent parts of the Thurian community. These names were, 1. Arcadian. 2. Achæan. 3. Elean. 4. Bœotian. 5. Amphictyonian. 6. Dorian. 7. Ionian. 8. Athenian. 9. Eubœan. 10. Insular. See Diodorus, xii. 10, 11.

tricts. In like manner, the importation of African slaves into Virginia and Cuba did not prevent Virginia and Cuba from being respectively colonies of England and Spain. On the other hand, a small body of settlers in a new country, mixing with a larger body, is merged in the larger body; and the new community which they jointly form is considered as a colony of the state whose inhabitants preponderate in it. Thus, in spite of the body of Prussian protestants who left their own country on religious grounds and settled in South Australia, South Australia is deemed to be an English colony.

Furthermore, a colony may be established in a territory, being either uninhabited or thinly inhabited, as has been the case with the English colonies in North America and Australia. A colony may, likewise, be established in a territory, of which the ancient inhabitants are either expelled or reduced to a state of slavery. Thus the Athenians established a colony in Melos, during the Peloponnesian war, after having slain the adult males and enslaved the rest of the native population.* The foundation of a Roman colony was generally preceded by an ejection of the native occupiers and cultivators.† The Spanish settlers of America, likewise, exterminated or enslaved a large part of the native population.

It is, moreover, essential that the persons who have abandoned their native country should form a

* Thucyd. v. 116.

† See above, p. 114, and Virgil's first Eclogue.

separate political community. Unless persons who abandon their native country form a separate political community, they are not colonists. For example, the French protestants, who fled from France after the revocation of the edict of Nantes, and took refuge in Germany and England, did not constitute colonies in those countries. The small body of English puritans, who first sought in Holland an asylum against religious persecution, did not form a colony until they afterwards established themselves in New England as a distinct community. Such a community may be politically independent, or it may be dependent on the government of its mother-country; but, in order to be a colony, it must be a separate, and consequently a new community.

A colony may be compared to a swarm of bees, which issue from the parent hive in a separate body and form a new hive.

Confusion of the terms colony and dependency.

Since a colony, though always a separate, may be either an independent or a dependent community, it is evident that a colony is not necessarily a dependency. It is manifest, on the other hand, that a dependency is not necessarily a colony of the dominant country; or, indeed, of any country.

According, however, to the present acceptation of the term, a colony is considered as nearly equivalent to a dependency.

"The term *colony*," says Mr. Mill, "is sometimes employed in a sense in which the idea of a body of people drawn from the mother-country hardly seems to be included. Thus we talk of the British colonies in the east, meaning, by that mode of ex-

pression, the East Indies. Yet it can hardly be said, that any body of people is drawn from the mother-country to inhabit the East Indies.* There is nobody drawn to *inhabit*, in the proper sense of the word. A small number of persons, such as are sent to hold possession of a conquered country, go; and, in this sense, all the conquered provinces of the ancient Roman empire might be called what they never have been called, colonies of Rome.

"In the meaning of the term 'colony,' the predominant idea among the ancient Greeks and Romans appears to have been that of the *people;* the egress of a body of people to a new and permanent abode. Among the moderns, the predominant idea appears to be that of the *territory*, the possession of an outlying territory; and, in a loose way of speaking, almost any outlying possession, if the idea of permanency is united, would receive the name of a colony. If we use the term with so much latitude as to embrace the predominating idea, both of ancients and moderns, we shall say that a colony means an outlying part of the population of the mother-country, or an outlying territory belonging to it; either both in conjunction, or any one of the two by itself."†

* Mr. Mill here alludes to the definition of the word "colony," given by Dr. Johnson in his dictionary, which is as follows: "A body of people drawn from the mother-country to inhabit some distant place." I may here remark, with reference to Dr. Johnson's definition, that the idea of *distance* from the mother-country is not properly involved in the word colony. Many of the Greek and Roman colonies were near their respective mother-countries: the English of the pale in Ireland, and the English settlement in Ulster, were likewise called colonies.

† Supplement to the Encyclopædia Britannica, article *Colony*.

The ancients never confounded the ideas of "colony," and of "outlying territory," or "dependency." The Greek colonies were independent from the beginning; and, therefore, it was not likely that the Greeks should make this confusion. The Roman coloniæ were sometimes little more than garrisons in a conquered territory, and they, therefore, might be considered so far analogous to the British possessions in the East Indies. But the lands of a Roman colonia were always divided among the coloni; and although the latter might, from time to time, perform certain military services, they were mainly looked upon as cultivators of the soil.* In the Roman provinces, the soil remained in the hands of the ancient proprietors, and was not divided among Roman citizens. Consequently the Roman provinces were not styled colonies.

The English word "colony" was formerly understood to have a meaning similar to that of the Latin word *colonia*. "*Colony* (says Stokes, in his work on the Constitution of the British North Ame-

Mr. Merivale, in his Introduction to a course of lectures on Colonization and Colonies, (London, 1839,) after having remarked that "the word colony is now applied, in ordinary and official language, to every foreign possession indiscriminately," proceeds to define a colony, to be "a foreign possession, of which the lands are occupied wholly or partially by emigrants from the mother-country."—p. 17, 18. M. de Beaumont, in the following passage of his work on Ireland, appears to make a colony equivalent to a dependency. "Il n'est point de pays sur lequel la révolution d'Amérique ait été plus puissante que l'Irlande. Il y avait alors analogie dans la situation des deux peuples. Les colonies de l'Amérique du nord étaient, il est vrai, beaucoup plus heureuses que l'Irlande, *quoiqu'elles ne fussent que des colonies; traitées comme telles*, elles avaient le bonheur d'être loin de l'Angleterre."—Tom. i. p. 135.

* See above, p. 114.

rican Colonies, published in 1783) signifies a company of people sent to a remote place to dwell there and cultivate the land." "*Plantation* in a sugar and rice colony" (he proceeds to say) "denotes a piece or tract of land, which is either granted to, or purchased by, a person to cultivate for his own use. But in the northern British colonies, where the produce is similar to that of England, the lands they cultivate are more frequently called *farms* than *plantations;* as they informed me when I was at New York. In a more extended sense, a *plantation* is a place to which people emigrate, in order to dwell there, with an allowance of land for their tillage, and immunities for the good of themselves, and the metropolis or mother-country to which they belong; and in this acceptation, the word *plantation* is used to denote a British settlement in America. In strict propriety of speech, *colony* denotes the people emigrated, and *plantation* the place in which they are settled; but these words are often used in a synonymous sense, both in Acts of Parliament, and on other occasions."*

Accordingly, any country, forming a separate community, where Englishmen have settled in such numbers as to form the bulk of the population, or of the cultivators or proprietors of the soil, is properly an English colony. In this sense, the New England States, Maryland, Virginia, the Carolinas, Georgia, Upper Canada, Australia, and the English West India islands, would be English colonies. But an

* P. 1, 2.

English dependency, in which the bulk of the cultivators or proprietors of the soil are not Englishmen, and in which the bulk of the English residents reside there for purposes of government or trade (as Ceylon, the East Indies, Malta, or the Ionian Isles) cannot, in strictness, be called an English colony, although its government may be under the Secretary of State for the Colonial Department.

In ordinary language, however, every dependency which is under the Secretary of State for the Colonial Department is called a colony. According to this extensive acceptation of the word, not only dependencies settled by English emigrants, as Barbadoes, Newfoundland, and Sydney, but also dependencies formerly settled by emigrants from other countries, as Trinidad, Ceylon, and Mauritius, and communities once independent, as Malta, are denominated English colonies. The same name is likewise applied, though less frequently, to the territories of the East India Company.*

The governments of those English settlements in North America, which were not proprietary or charter governments, were called *provincial governments,* and the territories themselves were called

* The territories of the East India Company are included by Mr. Montgomery Martin in his work on the "Statistics of the Colonies of the British Empire," (London, 1839) Guernsey and Jersey, with the other Channel islands, are not included in Mr. Montgomery Martin's list of the British colonies: Mr. Clark, however, admits them into the Appendix to his work on colonial law. It appears to me that, according to the usual phraseology, neither these islands, nor the Isle of Man, nor the territories of the East India Company, would be styled English colonies; since they are not under the superintendence of the Secretary of State for the Colonial Department.

provinces. Thus, we speak of the province of Canada or of Nova Scotia. Mr. Haliburton states in his Account of Nova Scotia, that "for some time previous to the revolution in America, the popular leaders affected to call the provincial establishments, or king's governments on the continent, *colonies* instead of *provinces*, from an opinion they had conceived that the word 'province' implied a conquered country."* "But," he adds, "whatever distinction there might once have been between the terms *province*, *colony*, and *plantation*, there seems now to be none whatever, and they are indiscriminately used in several Acts of Parliament."†

A doubt may exist whether a dependency acquired by conquest, which is thinly peopled, and in which numerous settlers from the dominant country establish themselves, does not become (in the proper sense of the term *colony*) a colony of the dominant country; provided that the native inhabitants leave the territory, or bear an extremely small proportion to the new settlers from the dominant country. According to Mr. Burge's view, the change just described actually occurred in the case of Jamaica. "The number of Spaniards," he says, "at the time the British took possession of Jamaica, did not exceed fifteen hundred. The only inhabitants who became proprietors, or of whom any mention is made, were the English subjects who resorted thither. The

* This opinion was doubtless founded on the derivation of *provincia* from *pro* and *vinco*; concerning which, see note (H).

† Historical and Statistical Account of Nova Scotia, vol. ii. p. 308.

island ceased to be inhabited by the conquered. It was peopled and settled by the subjects of England, under the invitation and encouragement of the proclamation of Charles II."*

Whenever I have occasion to use the term *colony* in the course of this essay, I use it in its proper sense, as defined above in this chapter.†

* Burge's Commentaries on Colonial and Foreign Laws, vol. i. p. 34.

† See p. 170. The word *colony* has been applied, by analogy, to some settlements which are not colonies, in the strict sense of the word, but which agree in some respects with colonies properly so called. Thus the pauper colonies of Holland are settlements of unemployed able-bodied poor persons, in uncultivated districts, within the territory of Holland. Such a settlement resembles a colony, strictly so called, in being a settlement in an uncultivated district; but differs from it, in not being a separate community. The establishments on the Russian frontier, for military purposes, are also called military colonies.—See Conversations-Lexicon, in the articles Armencolonien, and Militaircolonien Russlands.

CHAPTER IV.

Reasons for governing a Territory as a Dependency.

Circumstances determining the difficulty of communication between a government and its subjects.

As has been shown in the first chapter,* a supreme government is not under the necessity of governing a territory as a dependency, unless the communications between the seat of the supreme government and the territory be extremely difficult, and therefore extremely slow. This extreme difficulty, with the necessity to which it leads, is not entirely resolvable into the great distance between the seat of the supreme government and the dependency. The distance, indeed, may be so great, that it may produce the difficulty and necessity to a degree altogether insurmountable. But the tendency of the distance to produce the difficulty and the necessity may be countervailed by various causes, of which the following are the principal:—1. A skilful arrangement of the executive machinery of the government, and particularly of the organization of its naval and military forces. 2. The goodness of the roads and bridges, and an advanced state of the art of navigation, affording the means of rapid locomotion both by land and sea.

The rudeness of the governments, and the im-

* Above, p. 85.

perfection of physical science and the useful arts, rendered it impossible in ancient times to subject large populations and tracts of country to the immediate action of the same government. Accordingly, even in the comparatively civilized communities which were situated around the Mediterranean Sea, the state usually consisted only of a city with a small district attached to it, and all the remaining territory subject to the dominant city was parcelled out into dependencies. This (as we have already seen*) was the case with the republics of Athens and Sparta, and afterwards with those of Carthage and Rome. The greater the proximity of these dependencies to the dominant state, the more complete and lasting was their subjection to it. If their distance from the dominant country was considerable, their obedience was doubtful and intermitting.† So great, indeed, was the difficulty of exercising the powers of government at a distance, when the art of navigation was in its infancy, when permanent armies were not kept on foot, and when the means of moving large masses of men were imperfectly understood, that the earliest colonies, namely, those of the Phœnicians and Greeks, were from the beginning independent of the mother-country.‡ The non-interference of the Phœnician and Greek states with the government of their colonies did not arise from any enlightened views

* Above, p. 102—35.

† Ἐνδιαστῶς ἀκροῶνται, as Thucydides says, vi. 10.

‡ Above, p. 107—8.

of policy, and still less from any respect for the rights or interests of a weak community. It must be attributed exclusively (as Heeren has remarked respecting the Phœnician colonies*) to the inability of the mother-country to exercise a supremacy over a colony divided from it by a long tract of sea. At a somewhat later time, the progress of improvement in the arts, and particularly in the art of war, rendered it possible for Carthage and Rome to maintain their dominion over distant territories by means of a system of subordinate governments.†

The causes which led to the creation of dependencies in ancient times, among the nations which occupied the countries surrounding the Mediterranean, have always continued in operation among the Oriental nations, and have always produced similar effects. The territories of the great Oriental monarchies have always been (as has been already shown)‡ clusters of dependencies. The saying of Ovid, "Quis nescit longas regibus esse manus," is peculiarly inapplicable to the Oriental kings. *Their* arms have always been so short that they have only been able to keep a large territory in subjection by parcelling it out among a number of viceroys.

The civilized states of modern times have advanced so far beyond the civilized states of antiquity in a knowledge of the means by which extensive regions can be subjected to the efficient action of the same government, that the system pursued by the ancients has been completely abandoned by the

* Above, p. 109. † Ibid. p. 111, 112. ‡ Ibid. p. 96.

modern European states. In consequence of the discoveries of modern civilization, far larger tracts of country may be subjected immediately to the supreme government, and far more distant territories may be governed as dependencies, than the ancients would have conceived possible. Aristotle speaks of a population of a hundred thousand freemen (which would not imply a total population of more than five or six hundred thousand souls) as too large to constitute a single state;* but now thirty-five millions of souls are directly subject to the French government, and twenty-four millions of souls to the English. Again, the Phœnicians would have found it impossible to maintain their supremacy over their colony of Carthage, or the Phocæans over their colony of Massilia; but the Spanish, Portuguese, French, Dutch, and English have established and retained colonial dependencies in the most distant quarters of the world, in Africa, Asia, America, and Australia.

But, notwithstanding the facilities for communication afforded by the arts of modern civilization, the point is soon reached, even in the present time, at which it becomes impossible for the most powerful community to govern a territory without interposing a subordinate government between it and the supreme government; thus it would be impossible to render the West India islands or the North Ame-

* Οὔτε γὰρ ἐκ δέκα ἀνθρώπων γένοιτ' ἂν πόλις, οὔτ' ἐκ δέκα μυριάδων ἔτι πόλις ἐστίν. Eth. Nic. ix. 10.

rican provinces directly subject to the English government.*

Since a possibility of rapid communication with the persons to be governed is a necessary condition to the exercise of the powers of government, the modern inventions for accelerating the transport of persons and letters have an important influence in enlarging the circle, within which the powers of a government may be efficiently exercised. They

* Burke dwells on the obstacles to government produced by distance, in the following passage of his speech on conciliation with America

"The last cause of this disobedient spirit in the colonies is hardly less powerful than the rest, as it is not merely moral, but laid deep in the natural constitution of things. Three thousand miles of ocean lie between you and them. No contrivance can prevent the effect of this distance in weakening government. Seas roll, and months pass, between the order and the execution; and the want of a speedy explanation of a single point is enough to defeat a whole system. You have, indeed, winged ministers of vengeance, who carry your bolts in their pounces to the remotest verge of the sea. But there a power steps in, that limits the arrogance of raging passions and furious elements, and says, 'So far shalt thou go, and no farther.' Who are you, that should fret and rage, and bite the chains of nature? Nothing worse happens to you than does to all nations who have extensive empire; and it happens in all the forms into which empire can be thrown. In large bodies, the circulation of power must be less vigorous at the extremities. Nature has said it. The Turk cannot govern Egypt, and Arabia, and Curdistan, as he governs Thrace; nor has he the same dominion in Crimea and Algiers which he has at Brusa and Smyrna. Despotism itself is obliged to truck and huckster. The sultan gets such obedience as he can. He governs with a loose rein, that he may govern at all; and the whole of the force and vigour of his authority in his centre, is derived from a prudent relaxation in all his borders. Spain, in her provinces, is perhaps not so well obeyed as you are in yours. She complies too; she submits; she watches times. This is the immutable condition, the eternal law, of extensive and detached empire." Works, vol. iii. p. 56.

enable the supreme government to subject a larger extent of territory to its immediate action; they increase the influence of the dominant country over all its dependencies; and they also enable it to govern more distant territories in that form.

Although territories lying at a considerable distance must be placed under a subordinate government, the facility and regularity of communication with them materially affect the amount of influence exercised by the supreme upon the subordinate government, and the amount of protection which their inhabitants receive from the former against the latter. The extent to which the difficulty of communication diminishes the influence of the supreme over the subordinate government, may be illustrated by an incident which occurred in the colony of New South Wales. In the year 1808, a dispute arose between the governor of New South Wales and some officers of the New South Wales regiment, respecting the trial of a prisoner in which these officers were concerned. In consequence of this dispute, the regiment, having its officers at its head, marched with bayonets fixed, drums beating, and colours flying, to the government-house, seized the person of the governor, formally deposed him from the government, and established their own commanding officer as governor in his stead. The commanding officers of the regiment continued to exercise all the powers incidental to the office of governor for nearly two years; at the expiration of which period

a new governor, appointed by the crown, arrived from England, and quietly assumed the government.*

It may be remarked, that the earliest establishment, in the nature of a post, for the speedy conveyance of letters, appears to have been formed for the purpose of maintaining the influence of the supreme government over the governors of dependencies. "In order," says Heeren, "to enable the King of Persia to communicate rapidly with the provinces and their governors, an establishment was created which has been compared, though not quite accurately, with the posts of modern Europe. Couriers were appointed, who were divided according to stages, every stage forming a day's journey; their duty was to convey the instructions of the king to the satraps, and the despatches of the latter to the king. An institution of this kind is so much needed in a despotic empire, where the maintenance of the dependence of the viceroys is one of the most difficult problems, that it occurs in nearly all such states which have had a tolerably well-organized administration. They existed in a similar manner in the Roman empire, and were established in a still more elaborate form in the

* Governor Bligh was deposed from his office on the 26th of January, 1808. Lieut.-Colonel Macquarie assumed the government of New South Wales on the 28th of December, 1809. See Lang's Historical Account of New South Wales, vol. i. ch. 4 and 5, where there is a detailed history of this transaction. The officer who deposed Governor Bligh was subsequently tried in England by a court-martial for mutiny, and cashiered.

Mongolian kingdoms, under the immediate successors of Gengis Khan."*

In rude times, and in imperfectly civilized communities, we perpetually find the subordinate governors of the more distant dependencies throwing off their allegiance to the supreme government, and attempting, often with success, to establish their independence. The improved administrative machinery of modern governments, the better organization of their naval and military forces, and their means of communicating rapidly with their distant dependencies, have so countervailed the tendency of distance, that no governor of such a dependency would attempt or think it possible to render himself independent.†

It may, lastly, be remarked, that as the difficulty of communicating between the seat of the supreme government and the dependency is the cause which renders it necessary for the supreme government to govern it in that form, the insulation of a territory, unless productive of this difficulty, does not create the necessity of placing it under a subordinate government. Whenever a territory is suf-

* Ideen, t. i. p. 497. Concerning the Persian posts, see Xenoph. Cyrop. viii. 6. § 17. The Roman posts were first instituted by Augustus, in order that they might bring intelligence from the provinces: "Et quo celerius ac sub manum annunciari cognoscique posset, quid in provincia quaque gereretur, juvenes primo modicis intervallis per militares vias, dehinc vehicula, disposuit. Commodius id visum est, ut, qui a loco perferrent litteras, iidem interrogari quoque, si quid res exigeret, possent."—Sueton. Oct. c. 49. Compare Bergier, Hist. des Grands Chemins de l'Emp. Rom. liv. iv. c. 3—18, and Gibbon, Decline and Fall, c. 17 (vol. ii. p. 307).

† See below, ch. IX.

ficiently near to be within reach of the direct action of the supreme government, it may, although it should be detached from the territory in which the seat of the supreme government is placed, be governed without the interposition of a subordinate government; for example, the Rhenish provinces of Bavaria and Prussia are immediately subject to the supreme governments of those two kingdoms, although they are separated from them by intervening portions of territory belonging to other independent states.

CHAPTER V.

Separateness of a Dependency, as arising from the Peculiarities of its Legal System.

IT has been shown in the first chapter* that, in consequence of the complete organization of the government by which they are immediately governed, the inhabitants of a dependency form a community which is essentially as separate from the dominant country as is consistent with their subjection to the supreme government. But besides the necessary cause which thus separates a dependency from the dominant country, there are other causes which frequently, though accidentally, tend to the same effect. The peculiarities by which the body of law appropriate to the dependency is distinguished from that of the dominant country, are the most important cause of this description.

Most of the new laws affecting a dependency are made by its local government.

It follows from the remarks in the first chapter that the supreme government rarely legislates for a dependency, excepting as to its relations with the dominant country, with the other dependencies of that country, or with foreign states.† The same is likewise true of that portion of the subordinate government which consists of persons resident in the dominant country. Consequently most of the newly enacted laws of a dependency emanate from the local subordinate government; and thus its legal system

* Page 82. † Above, p. 81.

naturally acquires, to a considerable extent, a peculiar character.

Even in a dependency which is a colony of of the dominant country.

Even where the dependency is a colony of the dominant country, the founders of which brought with them the laws and institutions of the parent state, its legal system is peculiar. For, in the first place, such laws and institutions of the mother-country as are suitable to a colony, are alone considered as being in force in it. Such, at least, is the rule of the English law; and a similar rule must, from the necessity of the case, obtain with respect to the colonial dependencies of every country. "It hath been held," says Blackstone, "that if an uninhabited country be discovered and planted by English subjects, all the English laws then in being, which are the birthright of every subject, are immediately there in force. But this must be understood with very many and very great restrictions. Such colonists carry with them only so much of the English law as is applicable to their own situation and the condition of an infant colony; such, for instance, as the general rules of inheritance and of protection from personal injuries. The artificial refinements and distinctions incident to the property of a great and commercial people, the laws of police and revenue (such especially as are enforced by penalties), the mode of maintenance for the established clergy, the jurisdiction of spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for them, and therefore are not in force."*

* Commentaries, vol. i. p. 107.

The following is Mr. West's opinion on this subject, given to the Lords Commissioners of Trade and Plantations in 1720:—"The common law of England is the common law of the plantations, and all statutes *in affirmance of the common law,** passed in England antecedent to the settlement of a colony, are in force in that colony, unless there is some private act to the contrary; though no statutes made since those settlements are there in force, unless the colonies are particularly mentioned. Let an Englishman go where he will, he carries as much of law and liberty with him as the nature of things will bear."†

Lord Mansfield expressed himself as follows, in the case of Campbell *v.* Hall:—"It is absurd that in the colonies they should carry all the laws of England with them. They carry such only as are applicable to their situation I remember it has been determined in the council. There was a question whether the statute of charitable uses operated on the Island of Nevis. It was determined it did not; and no laws but such as were applicable to their condition, unless expressly enacted."‡

Acts of Parliament made after the foundation of an English colony do not extend to it, unless, 1°, they name that colony in particular or the colonies generally; or 2°, have been adopted by an Act of

* The words which I have marked by Italics appear to be an attempt to designate the class of statutes which are likely to be suitable to the wants of a new colony.

† 1 Chalmers' Opinions, p. 192, and compare vol. ii. p. 202.

‡ 20 Howell's State Trials, p. 289. Nevis was colonized from England: see Clarke's Colonial Law, p. 9. n.

the colonial legislature; or 3°, have been received and acted upon in the colony.*

According to the opinion of the attorney-general of Jamaica, British statutes amending the common law apply to a colony where the English common law is in force, even when they do not name the colony.† This rule, however, is so vague that it seems scarcely to admit of being applied. It may be observed that, although the English criminal law (both statute and common law) was introduced into Canada in 1774, the statutes amending the criminal law, which were passed subsequently to that year, were not considered as being in force in it.‡

The following is the account of the English law in force in Dominica, which was given by the chief justice of the island to the West Indian commissioners:—

"The common law, as far as applicable to circumstances and colonial situation, is generally followed. The acts of the mother-country, antecedent to the *colonial establishment, comprising the common law*, are in force also. *Many* English statutes are adopted and deemed in operation which passed before the cession of the island, and all statutes of England which affect us locally." The attorney-general of the same island stated to the commissioners his opinion, that "the rule upon this subject [viz., the communication of English law to the colonies] is so

* 2 Chalmers, p. 197. 220.
† Clark's C. L., p. 343.
‡ Lord Durham's Report on Canada, p. 42.

vague and so little understood, that decisions founded upon it will be often contradictory."*

The Attorney-general of St. Christopher's stated his opinion on this subject to the West Indian commissioners in the following terms:—"We consider the law of England operative here, in cases applicable to our circumstances, *except where it may be modified or altered by the acts of the colonial legislature.* We also consider acts of parliament, passed previous to the cession of the island to Queen Anne by the treaty of Utrecht, operative here in all cases in which they are applicable."†

The following is the account of the English laws affecting the Island of Barbadoes, which is given in the Report of the West Indian Commissioners:—"The laws in force here are, first, the common law of England; secondly, such Acts of Parliament as were passed before the settlement of the island, and are applicable to its condition. The bankrupt and poor laws, the laws of police, tithes, and the mortmain acts have been treated as not applicable to the condition of the colony, and are, therefore, not in force in it. Of acts passed subsequently to its settlement, such only are considered to affect the colony as have the island expressly named or virtually included in them."‡

* Cited in Clark's C. L., p. 139. Dominica, though it was declared by England to be neutral for a few years after the treaty of Aix-la-Chapelle, appears to be considered as having the legal incidents of a country colonized by Englishmen.

† Clark, p. 164. St. Christopher's is likewise considered to have been colonized by Englishmen.

‡ Clark, p. 181. The same is the case of Barbadoes.

The most complete attempt of the government of an English colonial dependency to determine how much of the law of England applies to it, is exhibited in an Act of the Bahama islands, passed in the fortieth of George the Third, intituled "An Act to declare how much of the Laws of England are practicable in the Bahama Islands, and ought to be in force within the same." As Mr. Clark remarks, "it gives a full and clear account of what part of the law of the mother country shall be deemed to be of force and binding in the colony, instead of leaving it to the varying discretion of the judges from time to time, as is the case in many of the other colonies."*

The Act, after reciting that, "the common law of England is the best birthright of Englishmen and of their descendants, but nevertheless is not in all respects applicable to the circumstances and condition of new and distant colonies; and that doubts have arisen how far the acts of parliament in which His Majesty's colonies and plantations in America are not expressly mentioned or included under general words, do extend to those colonies and plantations; by reason whereof his Majesty's liege subjects of these islands have sometimes been in danger of being deprived of the benefit of many good and wholesome laws; and that it is expedient that all doubt be taken away concerning a subject of such high importance;" declares, "that the common law of England, in all

* Clark, p. 368. See the Act in 1 Howard's Laws of the British Colonies, p. 341.

cases where the same hath not been altered by any of the acts or statutes hereinafter enumerated, or by any act or acts of the assembly of these islands, (except so much thereof as hath relation to the ancient feudal tenures, to outlawries in civil suits, to the wager of law or of battail, appeals of felony, writs of attaint, and ecclesiastical matters,) is, and of right ought to be, in full force within these islands, as the same now is in that part of Great Britain called England." Sect. 2 enacts, that "the several statutes and acts of parliament hereinafter particularly enumerated and mentioned, are, and of right ought to be, in full force and virtue within and throughout this colony, as the same would be if the Bahama islands were therein expressly named, or as if the aforesaid acts and statutes had been made and enacted by the general assembly of these islands." The titles of a large number of English statutes are then enumerated, beginning with 9 Hen. III. and ending with 27 Geo. II.

Sect. 3 declares, that "all and every the acts, statutes, and parts of acts and statutes of the Parliament of England or Great Britain, which relate to the prerogatives of the Crown, or to the allegiance of the people, also such as require certain oaths (commonly called the state oaths) and tests to be taken or subscribed by the people of Great Britain, also such as declare the rights, liberties, and privileges of the subject, are, and of right ought to be, of full force and virtue within this colony, as the same would be if the Bahama islands were therein

expressly named, or as if the aforesaid acts and statutes had been made and enacted by the general assembly of these islands."

The following is the account given by Mr. Haliburton of the legal system of Nova Scotia:—

"Upon the first settlement of this country, as there was no established system of jurisprudence, until a local one was legally constituted, the emigrants naturally continued subject and entitled to the benefit of all such laws of the parent country as were applicable to their new situation. As their allegiance continued, and travelled along with them according to those laws, their co-relative right of protection necessarily accompanied them. The common law, composed of long established customs, originating beyond what is technically called the memory of man, gradually crept into use as occasion and necessity dictated. The statute law, consisting of acts regularly made and enacted by constituted authority, has increased as the nation has become more refined, and its relationship more intricate. As both these laws grew up with the local circumstances of the times, so it cannot be supposed that either of them, in every respect, ought to be in force in a new settled country; because crimes that are the occasion of penalties, especially those arising out of political, instead of natural and moral relationship, are not equally crimes in every situation. Of the two, the common law is much more likely to apply to an infant colony, because it is coeval with the earliest periods of the English history, and is

mainly grounded on general moral principles, which are very similar in every situation and in every country. The common law of England, including those statutes which are in affirmance of it, contains all the fundamental principles of the British constitution, and is calculated to secure the most essential rights and liberties of the subject. It has, therefore, been considered by the highest jurisdictions in the parent country, and by the legislatures of every colony, to be the prevailing law in all cases not expressly altered by statute, or by an old local usage of the colonists similarly situated; for there is a colonial common law, common to a number of colonies, as there is a customary common law, common to all the realm of England. With such exceptions, not only the civil but the penal part of it, as well as the rules of administering justice and expounding laws, have been considered as binding in Nova Scotia. In many instances, to avoid question, colonial statutes and rules of court have been made expressly adopting them. Since the artificial refinements and distinctions incidental to the property of the mother country, the laws of police and revenue, such especially as are enforced by penalty, the modes of maintenance for the clergy, the jurisdiction of the spiritual courts, and a multitude of other provisions, are neither necessary nor convenient for such a colony, they therefore are not in force here."*

A native customary law common to several dependencies (such as that here referred to by Mr. Hali-

* Haliburton s Nova Scotia, vol. ii. p. 343—5.

burton) is not peculiar to the North American settlements. Its existence is also mentioned in some of the West Indian islands, by the West Indian Commissioners.

"The law of slavery is to be found in a sort of common law of the colonies, and in the acts of the local legislatures. The Chief Justice of Grenada calls it 'a customary law, superadded to the law of England, supplemental to the common law.' In this island (Barbadoes), and I believe in all others, it was not expressly instituted or established by positive law, but obtained insensibly, and at present depends upon certain unwritten maxims and principles (derived chiefly from the civil law), and a usage founded thereon. This, though not strictly a legal prescription, has been a uniform practice, recognized in the earliest acts of assembly, regulated at various periods of their history, and constantly admitted as legal in their courts of justice."*

Vagueness of the rules respecting the applicability of the English law in English dependencies.

It may be remarked generally of the preceding rules respecting the applicability of the law of England in its colonial and other dependencies, that they are vague and ill defined; that consequently, they leave a large discretion to the courts of the dependency, and even throw a doubt upon the extent of the legislative power possessed by its subordinate government.

Mr. Howard, in his work on the laws of the British colonies in the West Indies, and other parts of America, has the following remarks on the sub-

* First Report of the Commissioners of Inquiry into the administration of justice in the West Indies, p. 65.

ject. "It is clear that the English laws are partially in force in many of our American possessions; but it is equally clear, that for want of certain admitted principles, upon which the applicability of those laws can be established, it is very difficult to define which of them do, and which do not extend to the colonies respectively; and that, on the contrary, the greatest difference of opinion exists on the subject both at home and in the colonies."*

The following passages, relating to the same subject, occur in the third report of the Commissioners for inquiring into the administration of justice in the West Indies.

"The subject first engaging the attention of the Commissioners in every island was the received law of the colony. This was a point which could hardly be expected to present much intricacy, or to lead to great difference of opinion. But unfortunately the principle upon which certain laws of the mother country are operative and held binding in her colonies, far from being clear and precise, as is desirable in presenting rules of action which all men are required to obey, is involved in considerable obscurity, and often found very difficult of application."

"The answer generally received in the case of free persons, was,

"1st. We acknowledge the common law of Eng-

* Introduction, p. 12. See the examples, in proof of this assertion, adduced by Mr. Howard, p. 12—14, and particularly a passage from Pownal's work on the Colonies, cited in p. 12.

land;" but always qualified by "so far as it is applicable to the circumstances of the colony." * * *

2nd. It was said, we are bound by Acts of Parliament passed before the "settlement of the colony," and "applicable to its condition;" that is to say, by the statutes of England passed antecedently (making, as will be perceived by the subjoined table, a difference in some cases of two centuries):

In Barbadoes	—	to 1627, but not "by the penal laws generally," said the Solicitor-general
In Tobago		to 1814
In Grenada		to 1763
In St. Vincent		to 1763
In Dominica		to 1763
In Antigua		to 1632, but not "by the penal laws, at least in the case of slaves," thought the Attorney-general.
In Montserrat		to 1632
In Nevis		to 1625
In St. Christopher		to 1713
In Tortola		to 1774

"The crown officer of Nevis said, 'we are bound by all Acts of Parliament of the mother country, antecedent to a certain period, but *what* that 'certain period' is, does not appear to have been settled by any judicial decision or record here.'"*

In consequence of the rule of English law, that a colony founded by Englishmen receives such of the statute and common law in force at the time of its foundation as is applicable to its condition, but does not receive such statutes passed subsequently to its foundation, as do not expressly include it, or such rules of common law as are contained in decisions made after the same period, it necessarily happens

* Third Report, p. 97, 98.

that different portions of the statute and common law are in force in English colonies founded at different times; and that most of the alterations made in the statute and common law of the mother-country subsequently to the foundation of a colony, do not extend to it.

The reason assigned for the rule that new colonists take out with them the existing law of England, so far as it is applicable to their condition, is, that the law of England is the birthright of every Englishman.* This reason, however, as so stated, is too extensive; for an Englishman going to an English dependency, which is not an English colony, does not necessarily live under the English law. There is no system of *personal law* in the dependencies of England,† such as existed in western Europe soon after the conquests of the German barbarians, and as now exists in Hindostan. The true reason for this rule seems to be, that new colonists take out with them the law of the mother-country, from the necessity of the case. It is necessary for them to have some system of law, regularly administered, if they are to be a civilized community; and what other system of law could they adopt? They could

* 2 Peere Williams, p. 75.

† "The law and legislation of every dominion equally affects all persons and all property within the limits thereof, and is the true rule for the decision of all questions which arise there. Whoever purchases, sues, or lives there, puts himself under the law of the place and in the situation of its inhabitants. An Englishman in Minorca, or the Isle of Man, or the plantations, has no distinct right from the natives while he continues there." Lord Mansfield, in Campbell *v.* Hall, 20 Howell's S. T. 323.

not create off-hand a new body of law; and there are no persons among them who are acquainted with any foreign system of jurisprudence, so as to be able to administer it. Moreover, the system of law under which they have hitherto lived, to which they have been accustomed, and which is expressed in their native language, is, on the whole, the best suited to their wants, however different the circumstances of the colony may be from those of the mother-country. It may be remarked, that this reason does not apply to dependencies acquired by cession or conquest, which already possess a legal system of their own; and accordingly the body of the English law does not obtain in dependencies so acquired.

The peculiar circumstances of a dependency necessitate the enactment of peculiar laws.

Another cause of the peculiarity of the legal system of a dependency is, that the peculiar interests of the dependency, growing out of its peculiar circumstances, necessitate the enactment of peculiar laws. For example, the employment of New South Wales and Van Diemen's Land, as places of punishment for transported convicts, has necessitated the establishment, in those colonies, of laws altogether different from any of the laws of the mother-country. In like manner, the system of slavery which prevailed in the Spanish, French, Dutch and English colonies of America, caused a set of legal rules different from any obtaining in the legal systems of the respective mother-countries to be introduced into those colonies.*

* See Burge, vol. i. p. 735. (ch. 10.)

The laws which are peculiar to a dependency are sometimes, though rarely, introduced into it by the direct legislation of the supreme government. More frequently, however, they are introduced into it by the legislation of the local subordinate government, or grow up as rules of unwritten law, through the indirect legislation of the local courts.

A dependency not being a colony of the dominant country, naturally retains much of its native law.

If a territory belonging to an independent state, or being itself independent, is acquired by cession or conquest, the system of law which obtains in it at the time of the acquisition, can hardly fail to be considerably different from that of the dominant country which acquires it. In general, a country thus acquiring a dependency is satisfied with reorganizing its local government, and modifying its public law, and is contented to leave its civil law (or *jus privatum*) unchanged. By this mode of proceeding the dominant country secures its own dominion, and avoids the production of the confusion which must inevitably ensue in any community upon a sudden change of its law of property and contracts. Thus, as we have already seen, the Roman municipia and provinces retained for a time much of their peculiar laws and institutions under the dominion of Rome.* In like manner, every country conquered by or ceded to the Crown of England retains such laws and rules of law (not inconsistent with the general law of England affecting dependencies) as were in force in it at the time of the conquest or cession, until they are repealed by a competent

* Above, p. 113, 119.

authority.* Now, inasmuch as many independent states, and many dependent colonies of other states, have become English dependencies; many of the English dependencies have retained wholly, or in part, foreign systems of jurisprudence. Thus Trinidad retains much of the Spanish law; Demerara, the Cape of Good Hope, and Ceylon, retain much of the Dutch law; Lower Canada retains the French civil law according to the coutume de Paris; St. Lucie retains the old French law as it existed when the island last belonged to France; Mauritius retains such of the French codes as were extended to it; Malta, which was a municipality of the kingdom of Sicily, retains the old Sicilian law as modified by the subsequent legislation of the grand masters; the Ionian islands retain much of their old Venetian law; and the dominions of the East India Company retain much of the Hindoo, Mahometan, and other native systems of law and legal usages. Blackstone properly remarks, that the common law of England does not obtain, as such, in an English dependency acquired by conquest or treaty.†

It has been remarked above that the rule of English law respecting the communication of the statute and common law of the mother-country to an English colony produces two singular consequences: first, that different portions of the statute and common law of the mother-country are in force in different colonies; and secondly, that most of the

* See note (M) at the end of the volume.

† Commentaries, vol. i. p. 108.

alterations in the statute and common law of the mother-country, which have been made since the foundation of the colony, are not received in the colony. An analogous effect is produced by the rule of the English law respecting the retention of the native law of a dependency acquired by England, in cases in which the dependency has been the dependent colony of another state. In these cases, the laws of the mother-country, as they existed at the time of the transfer of the colony, are in force in such colony, without any of the alterations which may have been made subsequently to the transfer. Thus the province of Lower Canada has for its civil law the French law, according to the coutume de Paris; although that law has long since been superseded in France by the laws of the revolution and the codes of Napoleon. In like manner, the Dutch colonies ceded to England are subject to the Dutch law, as it existed at the time of the cession. "The ancient law of Holland (says Mr. Henry, in his preface to his translation of Vanderlinden's Institutes of the Laws of Holland), as it existed before the subjugation of that country to France, and the introduction of the code Napoleon, still prevails in the Dutch ceded colonies, which never admitted the new code, from the circumstance of their being, during the war which preceded the short peace of Amiens and the treaty of Paris, under the dominion, by conquest, of Great Britain."* So, again, the French codes, which are in force in the island of Mauritius, are

* Pref., p. 12.

received in the form in which they were introduced into the island, and without the modifications which have subsequently been made in them by the French legislature.

Extent to which the legislative power of the subordinate government of an English dependency is restrained by the laws of the supreme government.

The present seems a convenient place for considering the extent to which the legislative power of the subordinate government of an English dependency is restrained by the laws imposed on the dependency by the supreme government.

It has been already stated, that a subordinate government can make any law consistent with, but cannot make any law derogating from, the laws emanating directly from the supreme government which bind the dependency. It is, therefore, necessary to consider what, according to the English practice, are the laws of the supreme government which bind a dependency.

In an English dependency which has been colonized by Englishmen, the laws of the mother-country are in force so far as they suit the condition of the colony; and an English dependency acquired by treaty or conquest retains generally the laws which it possessed at the time of the acquisition. But the laws just mentioned are not considered as being among the laws of the supreme government, which the subordinate government cannot alter; probably because they are considered to have been established directly by the express or tacit authority of the immediate government of the dependency, although they were so established with the tacit consent of the supreme government.

The laws of the supreme government which, according to the English practice, the subordinate government is unable to alter, are the written laws of the supreme government which apply specifically to the dependency, and were, therefore, passed at the time of, or subsequently to, its colonization or acquisition; or they are the written laws of the supreme government, passed before or after its colonization or acquisition, which apply to the dependency by a general description. For example, the legislature of Upper or Lower Canada could not make any law inconsistent with any provision of the Act of 1791, respecting the powers of the Houses of Assembly, the clergy reserves, and so forth; nor can an English dependency escape from the operation of the Navigation Acts, although it might have been founded subsequently to the passing of these Acts, which, therefore, would only include it by a general description.* It is supposed, moreover, that there are certain fundamental principles of the unwritten law of England, (although it is not pretended that they are very precisely defined,) to which every law or legal rule of a dependency must conform, and which, therefore, the subordinate government is unable to alter.† Assuming that there are such fundamental principles in force in

* The 3 and 4 Wm. IV. c. 59, s. 56, declares that no law or custom shall be in force in any of the British possessions in America, which is repugnant to any Act of Parliament made or thereafter to be made in the United Kingdom, so far as such Act shall relate to and mention the said possessions.

† See note (M).

every English dependency, we must suppose that the supreme government directly though tacitly introduced them.

It sometimes happens that a large body of law is introduced into a dependency by a legislative Act of the supreme government. Thus, the criminal law of England was introduced into Lower Canada by act of Parliament, in 1774. It appears that the criminal law so introduced has undergone some modifications by the provincial legislature, but that the power of the provincial legislature to make these changes has been disputed.* Whether the legislature of Lower Canada had or had not the power to alter the English criminal law as introduced into that province by Act of Parliament, it is certainly desirable that, whenever a large body of law is introduced into a dependency by the supreme government, a power of modifying its provisions should be expressly given to the subordinate government, so far as it concerns the internal affairs of the dependency, and does not affect its political relations with the dominant state.

It is probable that the practice which prevailed respecting the dependencies of Rome closely resembled that which prevails respecting the dependencies of England. Probably, the local government of a municipium or colonia could alter any of its laws, unless it was restrained by a positive enactment of the Roman legislature, and a provincial government could make any legislative innovation which was

* Lord Durham's Report, p. 42.

not inconsistent with the formula of the province, or any Roman law binding the provinces generally.

General remarks on the separateness of a dependent community.

It has been shown in the first chapter, that a dependency is characterized by its possessing a completely organized though subordinate government; and that it is necessarily as distinct from the dominant community in this respect, as is consistent with their being both members of the same independent political society.

The separateness of the dependency is increased by the peculiarities of its legal system, the general though accidental causes of which have been explained in the present chapter.

Having a peculiar government completely organized, and a peculiar legal system, it has a distinct history and distinct historical associations; it has recollections and feelings which extend to all its members, and are limited to them. It thus obtains a peculiar national character and a separate national existence.

Hence the inhabitants of a dependency are different from an equal number of persons not forming a separate community, but living in the midst of the population of an independent state. Every measure of the government of a dependency affects the inhabitants of the dependency, and them alone; whereas a portion of the members of an independent community (such as the inhabitants of a county or department) are, in general, affected by the measures of its government, not exclusively, but in common with all the other members of that community.

It is well known how great an interest attaches to the history of the small Greek and Italian states, because they were separate communities. However small or weak a separate community may be, its history can scarcely fail to present some features of interest. The interest will, doubtless, be greater if the community be independent than if it be dependent; but there can scarcely fail to be some interest, provided it be a separate community.

CHAPTER VI.

Advantages derived by the Dominant Country from its Supremacy over a Dependency.

HAVING in the preceding chapters attempted to explain and illustrate the nature of a dependency, I proceed, in this and the following chapters, to examine the advantages and disadvantages which arise severally to the dominant community and the dependency, from their political connexion with each other.

We will consider in the present chapter the advantages which the dominant community may derive from its supremacy over a dependency.

Advantages derived by the dominant country from its supremacy over a dependency.

These advantages are various, and are determined by the natural capabilities of the dependency, the character of its population, the policy adopted with regard to it by the dominant country, and other causes. It cannot, therefore, be stated absolutely that the dominant country derives any advantage or advantages from its political relations with a dependency.

The following appear to be the principal advantages which dominant states have derived, or attempted to derive, from the possession of dependencies.

1. Tribute or revenue paid by the dependency.

1. By the civilized states of antiquity, dependencies were chiefly valued as furnishing a revenue to the government of the dominant country. The subject

allies of Athens all rendered a tribute to the dominant republic, either in money or military and naval supplies; the amount of their contributions underwent several changes, and the fixing of it on such terms as should not produce dissatisfaction amongst the allies was considered nearly the greatest feat of Athenian statesmanship.* The subject allies of Carthage were likewise tributary. We have already stated that the arbitrary increase and vexatious collection of their tribute at the end of the first Punic war led to the dangerous rebellion against Carthage which is called the war of the mercenaries.† The Roman provinces also yielded a large revenue to the supreme government, from taxes which were either collected by Roman officers or farmed out by the government to contractors.‡

The dependencies of the Oriental monarchies have also paid a tribute to the monarch, after defraying the expenses of their own subordinate governments. This, as we have already seen, was the case with the ancient Persian empire, and still continues to be the practice of the Asiatic governments.§

The states of modern Europe have not in general derived any direct tribute or revenue from their dependencies. Most of the dependencies of modern European states have been colonies founded by their own citizens, which, during their infancy, have needed pecuniary assistance from the government of the mother-country, instead of being able to con-

* Above, p. 103.
† Above, p. 123.
‡ Ibid. p. 112.
§ Ibid. p. 96.

tribute to its expenses; and which, when grown to maturity, were considered beneficial to the dominant mother-country rather as affording to its citizens the means of commercial profit than as furnishing a direct revenue to its government.

The crown of Spain levied a tax of a certain portion of the gross produce of the gold and silver mines in its American colonies. But this tax, however it may have dazzled men's imaginations at a time when all wealth was supposed to consist in the precious metals, was not sufficiently productive to form an important resource of the Spanish monarchy. The colonial government of Spain was an expensive government,* and the American colonies did not yield any great surplus revenue to the mother-country.† The principal advantage which Spain expected to derive from her colonies consisted, as we shall show presently, in appropriating to herself the monopoly of their commerce. The colonies of France and Holland were in like manner chiefly prized as opening new fields of commercial enterprise, and no considerable revenue was ever extracted from them for the benefit of the mother-country.‡

* "The colony government of all these three nations (Spain, Portugal, and France) is conducted upon a much more expensive plan, and is accompanied with a much more expensive ceremonial than the colony government of England. The sums spent upon the reception of a new viceroy of Peru, for example, have frequently been enormous."—Smith's Wealth of Nations, b. iv. c. 7.

† Above, p. 151.

‡ On the taxation of the French West-India Islands see Raynal, b. xiii. Turgot, in his celebrated paper Sur les Suites de la Querelle entre l'Angleterre et ses Colonies, says, that the maintenance and

The English colonies have not in general been founded under the guidance or direction of the government. They have either been established by political and religious refugees, who sought in distant countries an asylum against the oppression of their own government, or by bodies of mercantile adventurers who attempted to better their fortunes by becoming planters in a virgin soil. The general policy of England has been, not to compel her dependencies to contribute to defraying the expenses of the general government.† The only exception to this policy is the remarkable one of the North American colonies. During the infancy of the Anglo-American colonies no attempt was made by the mother-country to tax them for the general purposes of the empire; because, although they were too weak to resist, they were too poor to pay. Afterwards, when they had grown into large and flourishing communities, they were required by the supreme government to contribute to its expenses; but it was found that, while they had acquired the means of payment, they had also acquired the power and disposition to resist.

defence of the French colonies were enormously expensive to France: "Dans la position de nos colonies, qui nous coûtent énormément à entretenir et à défendre."—Œuvres, tom. viii. p. 461. "Quant aux ressources de finance, il est notoire que l'imposition que l'on lève dans nos colonies ne suffit pasà beaucoup près aux dépenses de sûreté et d'administration qu'elles entraînent."—Ib. p. 459.

† "The English colonists have never yet contributed anything towards the defence of the mother-country, or towards the support of its civil government. They themselves, on the contrary, have hitherto been defended almost entirely at the expense of the mother-country."—Smith's Wealth of Notions, b. iv. c. 7.

The unfortunate war between Great Britain and her American colonies, which her attempt to tax them for the benefit of the general government produced, and the irrational obstinacy with which that war was continued after the firm determination of the colonists not to submit to the taxation had been clearly shown, generally prevent us at present from doing justice to the grounds upon which the claim of the mother-country was originally made. These grounds were anything but unreasonable. It was said that the benefit which the Anglo-American colonies had derived from the wars in which England had been engaged since the Revolution rendered it fair that they should contribute towards the expense of defraying the interest of the debts which those wars had necessitated. Some of these wars, it was added, had been carried on to a great extent for the defence of the American colonies. It was therefore contended, that the dominant country might justly levy in her American dependencies a tax of which the produce should be applied to defraying the expenses of the general government.*

It can scarcely be denied that this reasoning is substantially correct, and that the Anglo-American colonies might, without sacrificing any useful principle of government, have consented to contribute a moderate sum towards the expenses of the general government of the empire.

But there were many reasons why the Anglo-

* See Smith's Wealth of Nations, b. v. c. 3. (vol. iii. p. 459—65.) Adolphus, History of George IV. vol. i. p. 337.

Americans were naturally not inclined to take this view of the demand made upon them by the English government. In the first place, a dependency is (as we have already shown*) a separate community; and the members of it are accustomed to look upon the subordinate government as that which is peculiarly their own. The subordinate government keeps a separate account of its revenue and expenditure,† and the people of the dependency are therefore likely to acquire a habit of thinking that no tax ought to be paid by them except for defraying an expense of the subordinate government. Moreover, the natives of a dependency are accustomed to regard the supreme government as something in which they have scarcely any concern, which lies beyond their sphere, and to the prizes and emoluments of which the members of their little community cannot aspire.‡ The loss sustained by the dominant country in defending them during war is, in their opinion, amply compensated by the advantages which (according to her own avowed principles) she derives from regulating their external commerce. In addition to these general considerations, there were the following peculiarities in the case of the North American colonies:—1. Since the foundation of these colonies, the mother-country had not interfered systematically with their internal affairs; and, with the exception of their external commercial relations,

* Above, ch. V. † Above, p. 83.

‡ See Smith's Wealth of Nations, b. iv. c. 7, (vol. ii. p. 453,) and below, ch. x.

they had been allowed to enjoy practical independence. 2. They had not been required at any time since their foundation to contribute anything to the expenses of the supreme government; and there is scarcely any habit which it is so difficult for a government to overcome in a people as a habit of not paying. 3. The tax was imposed by Act of Parliament, and was attempted to be levied by officers of the supreme government. The objection to the impost would probably have been less if the colonial governments had been required to pay a certain sum annually to the supreme government, and if the determination of the mode of raising the revenue and the duty of collecting it had been entrusted to them.

In consequence of the resistance of the North American colonies to taxation by England, an Act of Parliament was passed in 1778, declaring that the King and Parliament of Great Britain would not from thenceforth impose any duty, tax, or assessment payable in any of the King's colonies, provinces, or plantations in North America or the West Indies, except only such duties as it might be expedient to impose for the regulation of commerce, and that the net produce of such duties should always be applied to the use of the colony in which it might be levied, in the same manner as other duties collected by the authority of the general assembly of the colony (18 Geo. III., c. 12.) Although this declaration was nothing more than a signification of the opinion of the parliament then assembled, and is not binding upon any succeeding par-

liament, yet it is not probable that the supreme government of England will again attempt to derive a revenue from any English dependency.

Adam Smith seems to be of opinion that no dependency ought to be retained, unless it contributes towards the expenses which it may occasion to the dominant country. Speaking of the expenses which Great Britain incurred on account of her North American colonies, he says:—"It was because the colonies were supposed to be provinces of the British empire that this expense was laid out upon them. But countries which contribute neither revenue nor military force towards the support of the empire cannot be considered as provinces. They may perhaps be considered as appendages, as a sort of splendid and showy equipage of the empire. * * * * If any of the provinces of the British empire cannot be made to contribute towards the support of the whole empire, it is surely time that Great Britain should free herself from the expense of defending those provinces in time of war, and of supporting any part of their civil or military establishments in time of peace."*

It cannot, however, be laid down generally, that a dependency is of no value to the dominant country unless it contributes directly to the support of the imperial government. Some of the advantages which will be enumerated in the present chapter may be sufficient to outweigh the disadvantages arising from

* Wealth of Nations, b. v. c. 3, at the end.

the expense occasioned to the dominant country by the possession of the dependency. It is nevertheless certain, that the expense caused to the dominant country by the possession of a dependency contributing nothing to the support of the supreme government, is a constant evil which nothing but unquestionable advantages can compensate.

The notion of deriving a tribute from dependencies, or even of making them defray all the expenses incurred by the supreme government on their account, is now generally abandoned; and, according to the modern view of the relations of a dominant state and a dependency, the advantages which the former derives from the latter ought to be confined to indirect advantages of trade, emigration, and other matters which will be stated presently. This view of the relations of a dominant state and a dependency prevails in all the European states which possess dependencies for commercial purposes in the other three quarters of the world. The government of Austria is supposed to derive from its dependency of Lombardy a revenue which it applies to the general purposes of the empire.

2. Another advantage accruing to the dominant state from its supremacy over a dependency is, that the latter may furnish men for the army and navy of the former. The great Persian army which invaded Greece was, as we know from the description in Herodotus, chiefly composed of bodies of men furnished by the several countries dependent on the Persian monarchy. The Grecian states made no

2. Assistance for military or naval purposes furnished by the dependency.

considerable use of their subject allies for this purpose. After the citizens had ceased to serve in war, the armies of the Greek states were chiefly composed of mercenaries. The Roman legions in early times consisted only of citizens; but by degrees the practice of recruiting in the provinces obtained, and under the Emperors they were formed almost exclusively of provincials. The commercial dependencies of the modern European states have in general had so scanty a population, and been situated at so great a distance from the dominant country, that the latter have not been able to draw supplies of men from them for their armies and navies. With the exception of Hindostan, the English dependencies have not in general been able to furnish men for their own defence, even where there was no doubt as to their fidelity to the dominant country. But whenever a state possesses a dependency which is fully peopled and at no great distance, it can draw upon it for this purpose. Thus Napoleon derived large supplies of men for his gigantic armies from the countries which he had made virtually dependent upon the French empire.*

A dependency may also be used by the dominant state as a military or naval station. We have seen above that the Roman colonies, in the early times of the republic, were substantially garrisons in countries not yet reduced to habits of obedience, and were considered as the advanced posts of the conquering Roman people.† The Carthaginians seem likewise

* See above, p. 140. † Ibid. p. 117.

to have partly used their foreign establishments for military purposes. The colonial and other foreign possessions of modern states have been rather disadvantageous than beneficial in a military point of view. They have furnished incentives to war, and, from their distance and extent, have been both difficult and expensive to defend. The dependencies of England in the Mediterranean—Gibraltar, Malta, and the Ionian Isles—must, however, be considered mainly useful to England as military and naval stations.

It may further be argued that the possession of dependencies increases the foreign trade and shipping of the dominant country, and that whatever increases the mercantile navy of a country, also augments its resources and facilities for naval warfare. This effect is doubtless produced in so far as the possession of dependencies tends to increase the foreign trade of a country. The extent to which the possession of dependencies tends to produce the latter effect, will be considered in the following remarks.

3. Another advantage which a dominant community may derive from its supremacy over a dependency consists in the trade which she may carry on with it, under circumstances more favourable to her traders than if the dependency were an independent state.

3. Advantage to the dominant country from its trade with a dependency.

Among the ancients, dependencies were chiefly considered as valuable on account of the revenue which they yielded directly, in the shape of tribute or military supplies, to the government of the domi-

nant country. The Phœnicians and Carthaginians founded some foreign settlements in order to serve as factories; but these establishments were intended rather to be places of refuge for trading vessels than to secure any profit to the mother-country by opening new markets for its productions.*

The idea of making dependencies profitable to the dominant country, by securing to the latter an advantageous trade with the former, is of comparatively modern growth. The ancient system of deriving a tribute from dependencies having been abandoned, the states of modern Europe which had colonial or other dependencies, thought that they could extract a large annual profit from them by subjecting their trade to a rigorous monopoly. For this purpose they excluded from the dependency all ships except those of the dominant country; and they prohibited the ships of the dependency from trading with any part of the world except the dominant country.

"The conquest of America," says Raynal, in his History of the Settlements of the Europeans in the East and West Indies, "gave the first idea of a new kind of settlement, the basis of which is agriculture. The governments that founded those colonies chose that such of their subjects as they sent thither should not have it in their power to consume anything but what they drew from the mother-country, or to sell the produce of their lands to any other state. This double obligation has appeared to all nations to be

* Concerning Emporiæ, a factory established by the Massaliots, see above, p. 145, note *.

consonant to the law of nature, independent of all conventions, and self-evident. They have not looked upon an exclusive intercourse with their own colonies as an immoderate compensation for the expenses of settling and preserving them. This has constantly been the system of Europe relative to America."*

No European nation carried its colonial monopoly so far as Spain, or enforced it with so much rigour. The maxims, however, by which England regulated her intercourse with her colonial dependencies were scarcely more enlightened. "The leading principle of colonization in all the maritime states of Europe (Great Britain among the rest) was," says Bryan Edwards in his History of the West Indies, "commercial monopoly. The word *monopoly* in this case admitted a very extensive interpretation. It comprehended the monopoly of supply, the monopoly of colonial produce, and the monopoly of manufacture. By the first, the colonists were prohibited from resorting to foreign markets for the supply of their wants; by the second, they were compelled to bring their chief staple commodities to the mother-country alone; and by the third, to bring them to her in a raw or unmanufactured state, that her own manufacturers might secure to themselves all the advantages arising from their further improvement. This latter principle was carried so far in the colonial system of Great Britain as to induce the late Earl of Chatham to declare, in Parliament, that the

* B. xiii. (vol. iv. p. 284. Engl. Transl.)

British colonists in America had no right to manufacture even a nail for a horseshoe."*

Adam Smith goes too far in asserting that a monopoly of the trade of its dependencies is necessarily hurtful to the dominant country.† On the other hand, even if it be admitted that the dominant country may occasionally derive some temporary benefit from a monopoly of the commerce of the dependency, it may be safely affirmed that a monopoly will, in the long run, be detrimental to those for whose supposed benefit it exists.

No trade can continue long to be carried on with profit which is not beneficial to both the parties concerned in it. If the ships of a dependency are restricted to the ports of the dominant country, this restriction proceeds upon the assumption that the inhabitants of the dependency, if permitted to buy and sell where they pleased, would buy or sell in some other country. If they are not permitted to trade with

* Vol. ii. p. 565, and see p. 443. Compare Smith's Wealth of Nations, b. iv. c. 7:—"The maintenance of this monopoly has hitherto been the principal, or more properly, perhaps, the sole end and purpose of the dominion which Great Britain assumes over her colonies. In the exclusive trade, it is supposed, consists the great advantage of provinces, which have never yet afforded either revenue or military force for the support of the civil government, or the defence of the mother-country. The monopoly is the principal badge of their dependency, and it is the sole fruit which has hitherto been gathered from that dependency. Whatever expense Great Britain has hitherto laid out in maintaining this dependency, has hitherto been laid out in order to support this monopoly." M. de Pradt, in his work entitled Les Trois Ages des Colonies (Paris, 1802), says: "La dépendance et le commerce exclusif constituent l'état essentiel des colonies Européennes, et leur différence avec les colonies des anciens."—Tom. iii. p. 368.

† B. iv. c. 7 (vol. ii. p. 429). Compare Mill's Article Colony.

whom they please, they will not be able to trade to the greatest advantage, and their progress in industry and the accumulation of wealth will probably not be rapid. Now if a community be not industrious and wealthy, no profitable trade can be permanently carried on with it. The best customer which a nation can have is a thriving and industrious community, whether it be dependent or independent. The trade between England and the United States is probably far more profitable to the mother-country than it would have been if they had remained in a state of dependence upon her.

It must be remarked, moreover, that the dominant country, in monopolizing the trade of its dependencies, disregards the opinion as well as the interests of their inhabitants. In its relations to its immediate subjects, a supreme government endeavours to disguise the selfishness by which it may really be determined. Though manifestly pursuing its own advantage to their manifest detriment, it evinces its deference to their opinion by pretending to consult their interests. But the policy which determines a dominant country to monopolize the trade of a dependency is avowedly calculated to promote the good of the former at the cost of the latter.* It shows

* "In most of the late speculative systems that I have seen, which have treated of the British colonies, there appears this great and fundamental error, that their interests in general are considered as distinct from, and in some respects opposed to, the general interests of the empire. We speak of them indeed as *our* colonies, and of their inhabitants as *our* subjects; but in our dealings we are apt to

that the dominant country despises the opinion of the dependent people; and, by thus wounding them in their feelings, as well as in their economical interests, it disposes them to throw off their dependent condition on any favourable opportunity for successful revolt. The tendency, therefore, of this erroneous policy is to produce a violent separation of the dominant and dependent countries, and to bring upon both of them the evils of war.

Another objection to a monopoly of the trade of dependencies is the system of smuggling to which it necessarily gives rise, if the trade from which other nations are excluded is likely to be extensive and profitable. Since the inhabitants of the dependency have a common interest with the foreign trader to defeat the monopoly, the efforts of the dominant country to maintain it can scarcely be successful, although she may make large sacrifices of money for the purpose.* If a nation persist in maintaining a

regard them with a spirit of rivalry or jealousy, as an unconnected or hostile people, whose prosperity is our detriment, and whose gain is our loss."—Edwards's Hist. of the West Indies, vol. ii. p. 532.

* The following is Raynal's account of the smuggling trade which was carried on with the Spanish colonies in America:—"This illicit trade was carried on in a very simple manner. An English vessel pretended to be in want of water, wood, or provisions; that her mast was broken, or that she had sprung a leak, which could not be discovered or stopped without unloading. The governor permitted the ship to come into the harbour to refit. But, for form sake, and to disculpate himself to his court, he ordered a seal to be affixed to the door of the warehouse where the goods were deposited; while another door was left unsealed, through which the merchandize that was exchanged in this trade was carried in and out by stealth. When the whole transaction was ended, the stranger, who

monopoly of the trade with numerous and important dependencies, it may thereby create a system of armed smuggling and piracy, which may amount to a perpetual succession of petty hostilities.* The Buccaneers were, as is well known, the creatures of the exclusive colonial policy of Spain; and these piratical traders became so numerous and powerful that they prevented Jamaica from again falling into the hands of the Spaniards after it had been taken and occupied by the English:† and they are said to have even meditated at one time the establishment of an independent state in the West Indies.

It may be added that the monopoly of the trade with extensive dependencies is likely to produce, not merely systematic smuggling and piracy, but also wars with foreign countries. It is well known that jealousies respecting colonial trade led frequently to misunderstandings, and sometimes to wars between

was always in want of money, requested that he might be permitted to sell as much as would pay his charges; and this was always granted, though with an appearance of great difficulty. This farce was necessary, that the governor or his agents might safely dispose in public of what they had previously bought in secret; as it would always be taken for granted, that what they sold could be no other than the goods that were allowed to be bought. In this manner were the greatest cargoes disposed of."—B. xiv. (vol. iv. p. 338. Engl. Transl.)

* "Par quels moyens les métropoles pourront-elles empêcher de deux milles lieues une contrebande à laquelle les colonies ont autant d'intérêt que les étrangers? Elles n'y réussiront point; si elles y pouvoient réussir, ce ne seroit que par des dépenses immenses qui surpasseroient tout le profit qu'elles croiroient tirer de leur colonies, et dont tout le fruit seroit d'aliéner l'esprit des colons et de les rendre ennemis de la métropole. La contrebande se fera bientôt à main armée."—Turgot, Sur les Suites de la Querelle entre l'Angleterre et ses Colonies, Œuvres, tom. viii. p. 450.

† Long's Jamaica, vol. i. p. 300.

the principal European states. The Spanish war which began in 1738, was, as Adam Smith remarks, principally a colony quarrel, its main object having been to prevent the search of the colony ships, which carried on a contraband trade with the Spanish main.*

In consequence of the numerous and weighty objections to the monopoly of the trade of its dependencies by the dominant country, and of the difficulties of enforcing such monopoly, the system has now been to a considerable extent abandoned, especially by England, whose commercial dependencies exceed those of all other countries put together.†

* Wealth of Nations, b. iv. c. 7, (vol. ii. p. 442). Turgot even anticipates that the independence of the Anglo-American colonies will so far diminish the commercial jealousy of nations as to remove this prolific cause of wars: —"Sage et heureuse la nation," he says, "qui la première saura plier sa politique aux circonstances nouvelles, qui consentira à ne voir dans ses colonies que des provinces alliées, et non plus sujettes de la métropole! Sage et heureuse la nation qui la première sera convaincue, que toute la politique, en fait de commerce, consiste à employer toutes ses terres de la manière la plus avantageuse pour ce propriétaire des terres, tous les bras de la manière la plus utile pour l'individu qui travaille, c'est-à-dire, de la manière dont chacun, guidé par son intérêt, les employera, si on le laisse faire, et que tout le reste n'est qu'illusion et vanité. Lorsque la séparation totale de l'Amérique aura forcé tout le monde de reconnoître cette vérité, et corrigé les nations Européennes de la jalousie de commerce, il existera parmi les hommes une grande cause de guerre de moins; et il est bien difficile de ne pas désirer un événement qui doit faire ce bien au genre-humain."—Œuvres, tom. viii. p. 460. Unhappily, Turgot's philanthropic anticipations have not been verified. The prejudices, on which the commercial jealousy of nations is founded, are too general, and too deeply rooted, to yield to the evidence afforded by the independence of the American colonies.

† "After all the unjust attempts of every country in Europe to engross to itself the whole advantage of the trade of its own colonies, no country has yet been able to engross to itself anything but the expense of supporting in time of peace, and defending in time of

England has, of late years, even gone to the opposite extreme, and has sacrificed its own commercial interests to the supposed interests of some of its dependencies,—as, for example, by imposing lower duties upon Canada timber, Cape of Good Hope wine, and West India sugar, than upon the same commodities being the growth of foreign countries.

The most plausible opinion respecting the commercial advantages derivable from dependencies seems to be, that the dominant country, by securing to itself an unrestricted trade with them, can prevent them from establishing the protecting and prohibitory duties which, if they were independent states, they would probably impose upon imports. This advantage is, at present, a substantial one; but it is an advantage which is founded exclusively on the perverse folly of independent states in imposing prohibitory and protecting duties on one another's productions. Thus the prohibitory duties levied in Great Britain upon foreign grain and other provisions have induced the United States to retaliate against Great Britain by imposing protecting duties upon foreign manufactures. When civilization shall have made sufficient progress to diffuse generally a knowledge of the few and simple considerations which prove the expediency of freedom of trade, and when, consequently, independent states shall have aban-

war, the oppressive authority which it assumes over them. The inconveniences resulting from the possession of its colonies every country has engrossed to itself completely. The advantages resulting from their trade it has been obliged to share with many other countries."—Smith's Wealth of Nations, b. iv c. 7.

doned their present anti-commercial policy, the possession of dependencies will no longer produce the advantage in question. The advantage consists in the possession of a specific against the evils arising from an erroneous system of policy. Whenever the errors of the policy shall be generally perceived, and the system shall be exploded, the specific against its evil effects will be valueless.

The expectation that civilized nations may become, in no long time, sufficiently enlightened to understand the advantages of free trade is not visionary. Even at present a progress towards a less restrictive system of commerce is visible over the whole civilized world. Protecting duties between different parts of a country immediately subject to the same government are now generally abandoned. Yet Turgot's measure for permitting a free trade in grain between the different provinces of France caused an insurrection in 1775; the corn trade between Ireland and England was first opened by Lord Grenville's administration in 1806; and the remaining protecting duties between the same two countries were not removed till 1823. The principle of a free commercial intercourse has been extended by the Prussian league to a certain number of neighbouring independent states. And although every nation still asserts the expediency of duties intended for the *protection* (as it is falsely styled) of native industry and commerce, and not for the levying of a revenue for the government, yet they all show a disposition to diminish the number and

rigour of the prohibitions and restrictions by which this so-called protection is afforded. Thus slow and painful are the advances of human reason, made, as it were, by groping in the dark, and retarded at every step by the opposition of short-sighted interest, the listlessness of routine, and the want of confidence in theoretical truths! If, however, the governments of civilized nations could once acquire so much reliance on the moderation and enlightenment of the governments of other civilized nations as to expect that the latter would allow an unrestricted trade with their own subjects, the motive for the acquisition and possession of dependencies, which is founded on the assumed folly of all governments respecting commercial intercourse, would no longer exist.

It may be added that, if a state of dependence checks the progress of a community in wealth and prosperity, the consequent limitation of its demand for imported commodities will more than compensate the advantages which the dominant country can derive from being able to regulate its commercial relations with the dependency. It is scarcely possible to conceive commercial prohibitions carried so far in the United States as not to permit a larger and more profitable trade with England than they would have carried on with her if they had remained English dependencies.

4. Another advantage which a dominant country may derive from its supremacy over a dependency is, 4. Facilities afforded by dependencies to

the dominant country for the emigration of its surplus population, and for an advantageous employment of its capital.

that the latter may furnish a field where the inhabitants of the former may find advantageous employment for themselves or profitable investments for their capital.

With respect to public offices in dependencies, in the gift of the supreme government, it may be remarked that the number of them can scarcely be sufficiently large to form an important resource to the people of the dominant country, although they may be convenient to its government as a source of patronage. Moreover, it is desirable in general (as will be shown hereafter) that none but a few of the principal government officers in a dependency should be natives of the dominant country. Even if this be denied, it will scarcely be maintained that a country ought to be kept in a state of dependence merely for the profit of the few natives of the dominant state who may be employed in governing it.

A more solid and general advantage, which the people of a dominant country may derive from the possession of a dependency, consists in the facilities for emigration and for the acquisition and cultivation of land which it may afford to them. It is, however, important for our present purpose to consider whether this advantage arises from the settlement being a dependency, or would not arise although it were independent.

It has been already remarked, that a colony may be independent from its first foundation; and that

such was the case with the Greek colonies, whose growth was, perhaps, more rapid and vigorous than that of any other colonies in ancient or modern times. The Anglo-American colonies, which were partly founded in order to afford employment for the superfluous labour and capital of the mother-country, were, as has been already stated, nearly independent, and derived little benefit from the few instances in which the supremacy of the mother-country was exercised over them. A body of emigrants may, therefore, found a new colony, which, by receiving fresh supplies of settlers from the mother-country, may gradually become a flourishing community, although its government be independent from the beginning.

The system of defraying the expenses of emigrants from the proceeds of the sale of public lands in the colony* does not necessarily suppose that the new settlement is a dependency of the country which sends out the emigrants. If it were advantageous for a new settlement to employ a portion of its public revenues (whether arising from the sale of lands or from any other source) in procuring immigrants, its government would naturally devote a portion of its revenues to this purpose, whether the settlement were independent or dependent.†

* For an account of this system, see the Edinburgh Review, vol. lxxi. p. 517.

† It is worthy of consideration, whether, in founding new colo-

It must be admitted that distant territories in a state of dependence would be colonized more advantageously than if they were independent, assuming that the government of the mother-country exercised a judicious control over their colonization. In modern times, however, the success of dependent colonies seems to have been owing rather to the enterprise and industry of the colonists themselves than to any assistance which they have received from the mother-country, though the political dependence of some of them may perhaps have been necessary to their security during their infancy.

On reviewing the history of the Greek colonies, the conquests of Alexander and of the Romans, and the settlements of the modern European nations in Asia, Africa, America, and Australia, it will be seen that the advancement of mankind is to be expected rather from the diffusion of civilized nations than from the improvement of barbarous or half-civilized tribes. The promotion of successful colonization is, therefore, one of the best means of advancing and diffusing civilization, and raising the general condition of mankind; and whoever can devise or carry

nies, the English government might not try the system of granting the land, not in perpetuity, but only for a term of years; upon the understanding that, at the expiration of the term, the land would be granted again, for a similar term, at the market price. The rents of the lands thus granted might in time afford a revenue which would enable the local government to defray its expenses without resorting to taxation direct or indirect; and as the experiment would be tried in a country in which the land had not been appropriated, it would not disturb existing rights and interests.

into execution any effectual means for facilitating and improving it, is amongst the greatest benefactors of his race. But there is nothing in the colonial relation which implies that the colony must be a dependency of the mother-country; nor generally is it expedient that such a relation should exist, even in the case of a newly founded settlement.

Land in a dependency is sometimes purchased by a native of the dominant state, who, without emigrating to the dependency, furnishes the capital necessary for the cultivation of the land, and employs a resident agent to superintend it. The chief part of the English West India Islands is owned by proprietors who reside in England; and the same is likewise the case with some parts of the cultivated districts of Australia. This facility might not exist if the settlement were an independent state, and its government, following the example of many other independent states, prohibited the acquisition of land by aliens.*

It may be remarked generally, that the benefit of dependencies to the dominant country in promoting its trade, and affording facilities for the emigration of its surplus population, arises from the exclusive and anti-social policy to which independent states have been led by a mistaken view of their own interests. It being assumed that every dependency

* This seems to be the principal advantage which a dominant country derives from dependencies, according to the view of M. de Pradt in the work above cited:—"Les colonies," he there says, "ne sont que des fermes de l'Europe."—Tom. iii. p. 368.

would, if it became independent, adopt this policy, the evils of dependence are inflicted upon it for the purpose of securing to the dominant state advantages which the latter would possess in an equal or greater degree if the dependency became independent and were wisely governed.

5. Transportation of convicts to a dependency.

5. Another advantage which a dominant country may derive from its supremacy over a dependency consists in employing it at a place to which convicted criminals may be transported.

The practice of sending individual criminals to islands in the Mediterranean was employed by the Romans; and Tacitus states that, under the Emperor Claudius, several thousand Jews, whom the Roman government wished to remove from Rome, were deported to the unhealthy island of Sardinia.* Some convicts were likewise sent from time to time by the Spanish and Portuguese governments to their American possessions.

But England was the first country which systematically used her dependencies as places for the reception and punishment of convicts. The transportation of convicts from England to the North American colonies, having been begun in the reign of Charles II., received a more regular and legal form in the early part of the following century, and was continued until those colonies became independent. In consequence of the loss of the colonies

* Ann. II. 85. See Heyne's Essay, Comparatur deportatio in Novam Cambriam cum deportatione Romanorum inins ulam, Opuscula, vol. iv. p. 268.

to which convicts were usually transported, a new settlement, intended expressly for the reception and punishment of convicts, and thence styled a penal settlement, was founded in 1788, (only six years after the signing of the peace of Paris,) in Australia.

The transportation of convicts to the North American plantations was probably suggested by the practice of voluntary emigrants, who were unable to defray the expenses of their passage from England, obtaining an advance from the planter, and redeeming the loans so advanced by working for him for a specified time, at a low rate of wages. It was found that the government might save the expense of maintaining convicts by selling them as slaves for a term of years, or for life, to a Virginia or Maryland planter.* It appears, however, that at this time the working of the system of transportation depended solely upon the interests of the purchasers of convict labour, and that there was no inspection of the convicts by any government authority after they had landed in the colony. Accordingly, any convict who had the means of paying to the planter the price of his services, was free from the moment of his landing.

The transportation to the Australian settlements has been regulated by severer rules. Since the

* See the curious account in Roger North's Life of the Lord Keeper Guildford, vol. ii. p. 24, of the mayor and aldermen of Bristol selling the persons whom they sentenced to transportation to America.

punishment of convicts was the main purpose for which the colony was founded, all the arrangements of the local government were made with reference to it. Moreover, every convict who arrived in the colony was subjected, whatever might be his pecuniary means or his former station in society, to some appearance of punishment, and was, at all events, prevented from leaving the colony.

The purpose of this Essay does not require me to give a detailed statement of the mode of managing the transported convicts which has been adopted in the Australian colonies, or of the changes which have been recently made in it. This subject has been exhausted by the reports of parliamentary committees, (particularly by that of a committee of the House of Commons which sat in 1837,) and by the labours of Archbishop Whately and other writers.

In consequence of the evidence thus obtained, the disadvantages of transportation, both to the dominant country and the dependency, have been shown by such convincing proofs, that the number of transported convicts has lately been diminished; and the system would probably have been abandoned altogether before this time, if its abandonment would not lead to the necessity of building penitentiaries in England. It is, however, to be hoped that this improvement will be effected before many years shall elapse.

It is possible that transportation might be usefully employed in combination with efficient peni-

tentiaries, as a means of providing for convicts who have completed the terms of their imprisonment. It happens frequently in a thickly peopled country, where employment is not easily obtained, that a convict recently discharged from prison is incapable of earning his livelihood by his own industry, and that the circumstances in which he is placed almost force him back into a life of crime. Now if a convict were, upon his discharge from prison, furnished with the means of emigrating to a distant colony, he might, if he were willing to accept the offer, be placed in circumstances which would enable him to lead a life of honest industry.

6. Glory of possessing dependencies.

6. The principal advantages which a country may derive from the possession of dependencies have now been enumerated and severally examined. There are, however, supposed advantages flowing from the possession of dependencies, which are expressed in terms so general and vague, that they cannot be referred to any determinate head. Such, for example, is the glory which a country is supposed to derive from an extensive colonial empire.

We will merely remark upon this imagined advantage, that a nation derives no true glory from any possession which produces no assignable advantage to itself or to other communities. If a country possesses a dependency from which it derives no public revenue, no military or naval strength, and no commercial advantages or facilities for emigration which it would not equally enjoy

though the dependency were independent, and if, moreover, the dependency suffers the evils which (as we shall show hereafter*) are the almost inevitable consequences of its political condition, such a possession cannot justly be called glorious.

* See below, ch. IX.

CHAPTER VII.

Advantages derived by a Dependency from its Dependence on the Dominant Country.

WE proceed next to consider the advantages which a dependency may derive from its dependence on the dominant community.

1. Protection by the dominant country.

The most obvious of these advantages is protection; since the relation between the two communities is owing to the comparative strength of the one and the comparative weakness of the other, and it is the interest of the stronger community to protect the weaker against foreign aggression. The dependency can hardly fail to derive great benefit from the protection thus afforded to it, if it be not required by the dominant country to contribute to its own military and naval defence, or the general military and naval defence of the empire. Even, however, if it should be required to contribute to those purposes, the benefits are considerable in spite of the price which it pays for them. If it were independent, its feebleness would expose it to frequent aggressions from other independent states; but in consequence of the protection received by it from the more powerful community on which it is dependent, it is comparatively secure from that great evil, though subject to the evils inherent in its dependent condition.

The benefit just adverted to is the greatest, when the need of protection is the greatest; in other words, when the dependent community is in the feeblest and most helpless condition. Accordingly, a dependent colony recently founded, if it be exposed to attacks from other civilized nations, or from neighbouring tribes of barbarians, derives much advantage from its dependence upon its mother-country, provided that the mother-country be able and willing to afford it the protection of which it is in need. But even if a newly founded colony should be exposed to this danger, the dominant country may not always be able or willing to afford it timely protection; as is proved by the unhappy fate of the French Huguenot colony in Florida, which was extirpated by the Spaniards soon after its foundation, and nearly all the members of it massacred.*

We may here remark that the members of a dependent community which is too weak to stand by itself, and whose territory possesses advantages rendering it an object of desire to independent states, ought to guard carefully against the natural error of supposing that they will benefit by a change of masters. They ought to remember constantly that they are condemned by natural causes to a state of dependence; that the evils which they suffer under their actual rulers may be inseparable from that condition; and that, though those evils may be partly imputable to the misconduct of their actual

* See Bancroft's History of the United States, vol. i. ch. 2.

rulers, a revolt or other defection might transfer them to worse masters, after it had exposed them to the evils which are incidental to a political revolution.

2. Pecuniary assistance by the dominant country.

Another advantage which a dependency may derive from its dependence, is pecuniary assistance, to a greater or less extent, from the dominant country. For, as a weak community benefits by its dependence on a stronger one, so a poor community frequently benefits by its dependence on a country richer than itself. In ancient times dependencies were always tributary, and the dominant state never expended upon them any funds derived from its own immediate resources. The great military roads and other works executed by the Romans in the provinces were probably made in great measure at the cost of the provinces themselves, though the conception and the execution of them were due to the Romans. In modern times, however, a dependency has sometimes received pecuniary assistance from the dominant country. Thus the English parliament has voted large sums of money for the making of the Rideau canal in Canada. A considerable sum of money was given by England for the purpose of defraying the expenses incurred by the local government of Malta during the prevalence of the plague in that island in the years 1813-14. Much money has been laid out by England in constructing fortifications in some of its dependencies; these fortifications, however, were rather intended for the benefit of the

dominant country than for that of the dependencies in which they were raised. The expenditure of England in the penal settlements of Australia must also be considered as intended for the benefit of the mother-country, although the settlements derive a great incidental benefit from it. The average annual expenditure of the French government upon Algiers has considerably exceeded three millions sterling; the chief portion of this expenditure is, however, for military purposes, and will therefore confer no lasting benefit upon the dependency.

3. Commercial advantages.

As the interests of a dependency are, in its external commercial relations, usually sacrificed to those of the dominant state, the chief commercial advantage which it can derive from its dependence is the protection afforded to its trade by the dominant country against foreign aggression. Moreover, goods imported into the dominant country from the dependency are sometimes admitted into it upon conditions more favourable than those upon which goods imported into it from other places are admitted.*

4. Advantage sometimes arising to the dependency from the indifference of the dominant country about its interests.

The evils suffered by a dependency, from the indifference of the dominant country about its interests, will be particularly considered in a following chapter.† But we may remark appropriately in the present place, that this indifference is sometimes advantageous to a dependency, or at least to the bulk of its population. For example, let it be sup-

* Above, p. 229. † Chap. IX.

posed that the influence of the wealthier inhabitants of the dependency gives them an ascendency in the local government; and that the same influence would give them the government of the dependency in the event of its becoming an independent state. Let it be supposed, moreover, that some institution of the dependency is oppressive to the majority of the inhabitants; but that the interests or prejudices of the influential and ascendent minority strongly incline them to maintain it. Now if the dependency were independent, its supreme government would perpetuate the institution indefinitely. In consequence, however, of its dependence, there is a chance that its supreme government may abolish the institution spontaneously, or may be forced to the measure by the public of the dominant country; for, as the inhabitants of the dominant country are generally indifferent about the concerns of the dependency, so are they naturally free from the interests and prejudices which lead the minority in the dependency to oppress the majority of their countrymen. Thus, if the British West Indies had been independent, the institution of slavery would have been perpetuated in them by their slave-owning legislatures; as appears from the persistence with which it is maintained in the slave-owning states of the American Union. But the great majority of the British people, having no personal interest in maintaining it, naturally felt with the slaves and against their masters; and the British parliament, determined by the opinion of that impartial public,

abolished the institution in those islands notwithstanding the opposition of the local legislatures.*

* This result of the influence of the supreme government upon a dependency was thoroughly understood by Sir Samuel Romilly, and is clearly indicated by him in the remarks on the Slave Registry Bill, which are contained in his Parliamentary Diary.—On the 13th of June, 1815, Mr. Wilberforce moved in the House of Commons for leave to bring in a Bill for establishing a registry of slaves in the plantations. The motion was opposed by several persons who had an interest in West India property. These persons (says Sir S. Romilly) argued, "that the attempt to carry such a measure was likely to produce very alarming consequences; that the British parliament's right to legislate as to the internal concerns of the colonies was disputed, and such an Act as this could not but excite the greatest jealousy and alarm on their part; and they hinted that it might produce open resistance." Sir S. Romilly himself spoke, and "insisted upon the right of the British parliament to make such a law; and he mentioned various instances of Acts passed to regulate the internal affairs of the islands; and showed by many instances how little was to be expected for the protection of the slaves, and amelioration of their condition from the colonial legislatures." Lord Castlereagh, in suggesting that the introduction of the Bill should be postponed, said that "the right of the British parliament to pass such a law could not be disputed; but it was very inexpedient to do it, if the colonial legislatures could be prevailed on to pass such Acts themselves." Sir S. Romilly adds the following remark: "A great deal has been gained by this debate. It is of great importance to put an end to the notion entertained, or at least proposed, by the planters, that their colonial legislatures have the sole and exclusive right to make laws to regulate their own internal concerns."—Memoirs of the Life of Sir S. Romilly, vol. ii. p. 180—1. See some further remarks in a similar strain on the same subject, Diary, June 19, ib. pp. 253—8; and April 22, 1818, ib. pp. 337—43. In p. 341, he says of a debate in the House of Commons on slavery in the English West India islands: "I discussed at some length this pretension of the West Indians to the exclusive right of making laws for their own government, and for the regulation of their slaves; and showed how contrary it was to the practice of past times, and how inconsistent with the state and condition of the great mass of the population of the islands. It has never, indeed, been without indignation that I have heard these boasted claims of independence, and this vindication of political rights on the part of the West Indians."

CHAPTER VIII.

Disadvantages arising to the Dominant Country from the possession of a Dependency.

Disadvantages arising to the dominant country from its possession of a dependency.

HAVING considered the advantages which arise to the dominant country and the dependency from the relation between them, I proceed to consider the disadvantages which may arise to the former from the same cause.

Expensiveness of the dependency to the dominant country.

1. It has been shown in a previous chapter that the dominant country can rarely succeed in compelling or inducing a dependency to contribute to the expenses of the supreme government; and, consequently, that the dominant country generally defrays from its own resources the expenses caused by the protection of the dependency in peace and in war.* These expenses are a disadvantage to the dominant country, even if they should be more than compensated by advantages which it derives from the possession of the dependency. It may be added, that the possession of a dependency often proves a powerful incentive to improvident and useless expenditure on the part of the supreme government; as is shown by the fortifications which have been raised in some of the English dependencies, and the prodigalities of the French government at Algiers.

Commercial restric-

2. In consequence of the prevailing errors respect-

* Above, p. 212—9.

tions caused by the dependency.

ing the nature of the advantages arising from trade, it is usual for the dominant country to grant commercial privileges, by discriminating duties and other similar regulations, to its dependencies. Thus the duties upon timber, wines, and sugar imported into England from Canada, the Cape of Good Hope, and the East and West Indies are lower than the duties upon similar commodities imported into England from foreign countries. But one effect of such privileges is, that the dominant country purchases the commodities imported from its dependencies at higher prices than it would purchase commodities of the same sorts imported from other countries, if the privileges did not exist. Moreover, as commercial privileges granted by the dominant state to its dependencies imply corresponding prohibitions against other independent states, they provoke the governments of those states to foster the trade and manufactures of their own dominions by granting similar privileges to their own trading and manufacturing subjects. They, therefore, prevent that extensive commercial intercourse between independent communities, which would not only secure to each of them the greatest possible advantages of a merely economical nature, but would bind them together in mutual amity by the strong tie of common interest.

Wars caused by dependencies.

3. Another evil arising from the possession of dependencies is, that they tend to involve the dominant country in wars. A dependency may be situated at a great distance from the dominant

country; or it may have a long and vulnerable frontier confining on the territories of other independent states. For these and other reasons it often happens that a dependency is difficult of defence, and that foreign governments are therefore tempted to invade it.

The probability that the possession of dependencies will engender wars is further increased by the jealousies which the commercial policy of the dominant country towards its dependencies produces. The alienation between independent states, arising from commercial jealousies of this sort, has just been pointed out. It has also been shown in a former chapter that Adam Smith considers disputes about colonial trade as one of the most prolific sources of war in modern times; and that Turgot expected that the independence of the American colonies would diminish the causes which disturb the peace of the world.*

It may be said on the other hand, that the division of the civilized world into a few extensive empires, each consisting of a dominant country and its dependencies, would be more favourable to the preservation of peace than the division of the same region into independent states. It would appear from the perpetual hostilities between the republics of ancient Greece and Italy, and between those of Italy in the middle ages, that a multiplicity of independent and small states multiplies the chances of war. It is certain, moreover, that the

* Above, p. 228.

mutual wars of the numerous independent states subdued by the Roman arms were extinguished by their common subjection to the imperial city; and that the peace of the civilized world was commonly preserved by the imperial government, so long as the dependence of the provinces was not substantially impaired.*

It may be replied, however, that the formation of extensive empires is not favourable to the preservation of peace, inasmuch as the subjection of dependencies to the dominant country is liable to frequent disturbance. If the strength of the dominant country is not overwhelming, and if (as frequently happens) the people of the dependency are dissatisfied with its government, the latter will probably attempt to throw off their dependence; and in consequence of such attempts, wars are likely to arise between the dominant country and the dependency, or between the dominant country and those independent states whose governments suppose themselves interested in wresting the dependency from her. We have remarked in a preceding chapter that an ancient state, engaging in a foreign war, often began the contest with striking at the connexion between its enemies and their dependencies.† The same policy determined the government of France to interfere in the war between England and her American colonies; and it is said that

* See the passage of Claudian on the pacific influence of the Roman empire, cited above, p. 128, note *.

† Above, p. 111. note *.

England in the last century meditated an attempt to detach the Spanish colonies of America from Spain.

The only effectual security against unjust wars between independent communities is to be found in an improved international morality, and in the general existence of a conviction that the interest of such communities is not promoted by a system of mutual aggression and rapine. So long as independent states think it their interest to attack weak communities, for the purpose of enlarging their empire, and they are free from any moral restraint which might check them in the pursuit of this supposed interest, unjust wars between civilized nations must take place, although many small communities should be kept in a state of dependence. And if the governments of independent states should become sufficiently wise to abstain voluntarily from aggressions of this sort, the existence of numerous independent communities would not produce war.

Political corruption caused by dependencies.

4. Lastly, we may reckon amongst the disadvantages arising to the dominant country from the possession of dependencies, that it tends to generate or extend a system of official patronage in the dominant country, and thus to lower the standard of its political morality.

CHAPTER IX.

Disadvantages arising to a Dependency from its Dependence on the Dominant Country.

The disadvantages in question are necessary or natural consequences of dependence.

HAVING considered the disadvantages which may arise to the dominant country from the possession of a dependency, I shall consider such of the disadvantages affecting a dependency, as are necessary or natural consequences of its dependence on the dominant country. Since the disadvantages are necessary or natural consequences of dependence, all dependencies are subjected or exposed to them. It must be remarked, however, that they affect the inhabitants of different dependencies in different degrees; and where they are powerfully counteracted by special causes inherent in the special position and circumstances of a dependency, their pressure may be too gentle to affect its inhabitants seriously.

The disadvantages in question arise principally from the ignorance and indifference of the dominant country about the position and interests of the dependency.

Before we proceed to a particular examination of any of the disadvantages in question, we will advert to the source from which they principally arise; viz. the natural ignorance and indifference of the dominant country about the position and interests of the dependency. The dependency is necessarily separated from the dominant state by the distinctness of its immediate government;* and owing to this necessary separation, the inhabitants of the dominant state are naturally more indifferent

* Above, chap. V.

and ignorant about the concerns of the dependency than those of any district of their own country. But the ignorance and indifference consequent upon this necessary separation are often increased by accidental causes which estrange the dominant country from the dependency. It often happens, for example, that the two countries are divided by distance; or that the dependency is too insignificant and obscure to attract the attention of the dominant country; or that the inhabitants of the two countries are of different races and speak different languages; or that their religions, their morals and manners, or their laws and other political institutions, are more or less dissimilar.

The ignorance of the dominant country about the position, circumstances, and interests of the dependency is productive of numerous evils, some of which we shall hereafter consider in detail. It may be here stated in general terms, that the dominant country, in consequence of this ignorance, often abstains from interfering with the concerns of the dependency where its interference would be expedient; and where it does interfere with the concerns of the dependency, its interference, as not being guided by the requisite knowledge of those concerns, is frequently ill-judged and mischievous.

The evils arising to the dependency, from the ignorance of the dominant country respecting its concerns, are enhanced by its indifference. Not only does the dominant country know little of those concerns, but it has little desire to know anything

of them. Men's sympathies are in general too narrow to comprehend a community which is distinct from their own, although it may be ultimately subject to the same supreme government. Accordingly, the maxim that government exists for the benefit of the governed, is generally considered by the immediate subjects of a supreme government as applicable only to themselves; and it is often proclaimed openly that dependencies are to be governed, not for their own benefit, but for the benefit of the dominant state.

Nor are the ignorance and indifference of the dominant country about the concerns of the dependency limited to the supreme government. Hence, if any dispute should arise between the dependency and the supreme government, and if the dependency should appeal from the government to the people of the dominant state, it will probably find that it has not appealed to a better informed or more favourable tribunal. On the subject of the dispute, the people of the dominant country can scarcely be so well informed as their government; and in any struggle for power between their own country and the dependency, they are likely to share all the prejudices of their government, and to be equally misled by a love of dominion and by delusive notions of national dignity.

As the main obstacles to the good government of a dependency are the ignorance and indifference of the dominant country respecting its affairs, whatever tends to diminish them is likely to promote its

good government. On this account, newspapers and other periodical writings having a special reference to the affairs of dependencies, and published in the dominant country, are eminently useful. For the same reason it is the duty of those public departments in the dominant country, which are specially charged with the care of the dependencies, to provide for the publication of statistical and other information respecting their condition, at stated intervals, and in a cheap and commodious form.

Review of some of the disadvantages in question.

Having stated that the disadvantages affecting a dependency, which are in question in the present chapter, are necessary or natural consequences of its dependence, and having adverted to the source from which they principally arise, we proceed to consider the nature of some of these disadvantages, in some degree of detail.

Peculiar liability of the laws of a dependency to technical objections.

One of these necessary or natural disadvantages is the peculiar liability of the laws of a dependency to technical objections.

The powers of a subordinate legislature are expressly or tacitly delegated to it by the supreme government. In order, therefore, to determine whether an act of such legislature has a binding force, it is necessary to look to the nature and extent of the delegation. If the act be not within the scope of the delegation, it is without any binding force, and will be annulled upon application to a competent tribunal. It is difficult to delegate a power of subordinate legislation in terms exactly

expressing its purpose and extent; but unless this difficult task be perfectly accomplished, the validity of the laws which are made by virtue of the power is always questionable. Consequently, the laws of subordinate legislatures are liable to technical objections from which those of supreme governments are necessarily exempt; for, as the legislative power of a supreme government is not derived from any political superior, the validity of its laws cannot be questioned for want of authority in the lawgiver.

As the immediate government of a dependency is a subordinate legislature, its laws, like those of other subordinate legislatures, are liable to the technical objections noticed in the preceding paragraph. But, owing to causes which are peculiar to the legal systems of dependencies, its laws are also liable to technical objections from which those of other subordinate legislatures are exempt. For example, any law of an English dependency (whether colonized by Englishmen, or acquired by cession or conquest) may be impugned as not being consistent with certain fundamental principles to which the laws of an English dependency must, it appears, conform.* The vagueness of the terms in which these fundamental principles are expressed may afford a plausible ground for objections to the laws of an English dependency, although it should have been colonized by Englishmen, and therefore possesses a legal system closely resembling that of its mother-country; but if the dependency should have been

* Above, p. 207.

acquired by cession or conquest, and its laws therefore differ in many respects from those of the dominant country, the objection has a much wider, and indeed an almost unlimited application. So again, if the supreme government introduces a large portion of its own law (written and unwritten) into a dependency by a general description, it may be doubted whether any of the rules comprised in the body of law so introduced can be altered by the subordinate without the express permission of the supreme government; although it may be scarcely possible for the subordinate government to legislate without altering some of them.*

That this liability to objection on technical grounds is a great evil will not be disputed. It is manifest that all attempts to get rid of a law by impugning its validity, rather than by proving its inexpediency, and applying to the legislature to repeal it, are mischievous. Their mischievousness is owing mainly to the following causes:—1. Such attempts, being founded on a principle of general application, throw a doubt upon the validity of other laws than those which are directly attacked. 2. The annulling of a law has a retroactive operation; inasmuch as the acts done under it are also annulled: hence, unless the legislature should interfere specially, a law is rendered *ab initio* void, by which people have regulated their conduct, and upon

* An example of this inconvenience is afforded by the introduction of the English 'Criminal Law' into Canada. See above, p. 208.

which prudent men have founded reasonable expectations. 3. This mode of proceeding is equally applicable to good and to bad laws; since the defects in the form of the law are wholly unconnected with its practical operation.*

In general it is desirable that all rules (even though inexpedient) which have been long acquiesced in by common usage, and which have been believed to be invested with the legal sanction, should be considered by the courts and by the government to have a binding force, until repealed by a competent authority; and in most countries the courts have acted upon this principle.

It may be added, that the necessary vagueness of the rules respecting the portion of the law of the mother-country, which is in force in a new colony, (for example, of the rule of the English law, that a new colony acquires as much of the law of England as is suited to its condition,) confers a very extensive power upon the courts of such a dependency, and invests them with legislative rather than judicial functions. It may, moreover, happen that the disposition of the courts to question the validity of the existing laws may be increased by a rivalry between

* "Le philosophe qui cherche à réformer une mauvaise loi ne nie pas l'existence de cette loi et n'en conteste pas la validité; il ne prêche point l'insurrection contre elle. Il expose ses raisons; il fait sentir les inconvéniens de cette loi et les avantages qu'on trouveroit à la révoquer. Le caractère de l'anarchiste est tout différent. Il nie l'existence de la loi; il en rejette la validité; il veut exciter les hommes à la méconnoître comme loi, et à se soulever contre son exécution." Bentham, Tactique des Ass. Législ. tom. ii. p. 290.

lawyers of the dominant country and native lawyers in the dependency,* or even by a more ambitious attempt of the judges to supersede the subordinate government, and to get the entire management of the dependency into their own hands.†

Introduction of the laws, language, or religion of the dominant country into a dependency, without due regard to its position, circumstances, and interests.

Another of the necessary or natural disadvantages affecting a dependency, is its liability to an improper introduction of the laws, language, or religion of the dominant country.

The ignorance of the dominant country respecting the concerns of the dependency, combined with the habit, common to all nations, of preferring its own institutions and opinions to those of other communities, disposes it to dislike the laws, language, and religion of the dependency, and to substitute its own for them, without adequate reasons for making the change, and without a due regard to the position, circumstances, and interests of the dependent community.

The tendency to an improper introduction of the laws of a dominant country into a dependency is so strong that the question as to the extent to which, and the manner in which, the supreme government ought to introduce the laws of the dominant country into the dependency deserves a careful examination.

According to the rule which must, from the necessity of the case, obtain almost universally, new

* See Long's Jamaica, vol. i. p. 70. 72.

† See the account of the proceedings of the Supreme Court at Calcutta, in Mill's History of India, b. v. ch. 6.

colonists take out with them the laws of their mother-country, so far as such laws are suited to the condition of the colony.* The question just stated, therefore, does not arise in the case of a dependency which is a colony of the dominant country; and it arises only in the case of a dependency which has been acquired by treaty or conquest, and has preserved its original laws and institutions, which are different from those of its dominant country.†

Some of the most important considerations respecting the transplantation of laws from one to another have been stated by Mr. Bentham in his *Traités de Législation.* The following are the two first maxims which he lays down:—"No law ought to be changed, and no custom ought to be abolished, without some special reason." "No custom ought to be changed simply on the ground that it is repugnant to our habits and feelings."‡

These two maxims, however obvious and however important, have frequently been violated in the transplantation of the laws of a dominant country to a dependency. Many laws in dependencies have been changed, not because they produced inconvenient consequences, but because they differed from the corresponding laws of the dominant country, or because they were inconsistent with opinions which the people of the dependency did not share with the people of the dominant country.

* Above, p. 190. † Ibid. p. 203.

‡ Tom. iii. p 366.

In deciding how far the native institutions of a ceded or conquered dependency shall be maintained, and how far the institutions of the dominant country shall be introduced in their stead, the persons conducting the government of such a dependency have strong inducements to adopt the latter course. It is far easier to administer laws with which one is familiar than laws which one has to learn by a laborious process of study. It is likewise far easier to carry on the business of government in one's own language than in a foreign language with which one is imperfectly acquainted, or which perhaps one is compelled to learn. Moreover, it requires a considerable sacrifice of self-love, and some magnanimity, for a ruler to subject himself to the necessity as it were of going to school, and to place himself voluntarily in a situation of inferiority, in respect of knowledge, to the persons whom he is to govern. Whereas, if the opposite system be adopted, the ruler is placed in a situation of almost immeasurable superiority to the natives, inasmuch as he is as far superior to them in knowledge as in power. Furthermore, there is the disinterested attachment which most men acquire for the institutions of their native country, partly from being habituated to live under them, and partly from being accustomed to hear them extolled and to be told that it is patriotic to admire and love them. Consequently, when we see a native of the dominant country aiming at an injudicious introduction of its institutions into a dependency, it ought not to be inferred

that he is actuated solely by a desire of increasing his own power or importance. Many such attempts have been made from a sincere, though mistaken, notion of the intrinsic excellence of the institution, and from a supposition that it was suited to all countries and all states of civilization. The introduction of the tenure of land into Hindostan, which is known by the name of the *permanent settlement*, was prompted by the desire of creating in Hindostan such a body of wealthy landowners as exists in England; and though the measure has been most disastrous in its consequences, yet there is no doubt that the author of it thought that the state of things which he attempted to introduce would regenerate Hindoo society. In like manner an English lawyer would naturally, from ancient habit, seek to introduce trial by jury in any dependency where he was employed, however little suited to the circumstances of the country this mode of trial might be.

But a government which attempts to change suddenly the law of a dependency will soon find that it has undertaken a difficult, and, in part, an impracticable task.

In the first place, the civil law of a country can hardly be supplanted by a foreign system of jurisprudence without throwing into confusion all titles to property and all rights founded on contracts. The wholesale importation of a foreign system of jurisprudence necessarily creates great confusion in this respect, even if it should be effected by the communication of written laws. But the confusion is

increased still further, if an attempt should be made to import a body of unwritten law. Law existing in the form of a statute or a code can be transferred from one country to another with certainty, since a precise designation of the law intended to be transferred can be given. Thus (as we have already stated) the act styled the Declaratory Act of the Bahama Islands, determined how much of the statute law of England should be deemed to be in force in those islands, by enumerating the statutes to which it refers.* But unwritten law, which does not exist in a compact or explicit form, and which must be collected from the decisions of courts and from authoritative textwriters, cannot be designated with precision, and can be described only by terms of which the import is unfixed and fluctuating. Thus the "criminal law" of England was introduced into Canada in 1774; but it is not at all clear (as Lord Durham states in his Report) what is the extent of this phrase. Again, in Canada the French law of evidence obtains in all civil proceedings, with the exception of "commercial cases," to which the English law of evidence is to be applied; but (as Lord Durham further states) no two lawyers agree in their definition of "commercial cases."†

There is, moreover, great difficulty in introducing into any country a foreign system of judicial procedure, and expelling the system established in the practice of the courts. The rules of judicial pro-

* Above, p. 194.

† Report on the Affairs of British North America, p. 42. folio ed.

cedure commonly exist as usages, and not in the form of legislative regulations; and these usages are mainly preserved among the body of advocates. The advocates may, therefore, be considered as a sort of voluntary auxiliaries to the government, for the purpose of administering justice; so that any change which renders their acquired knowledge useless, must for a time throw serious impediments in the way of the regular conduct of the government.

In the next place, it is to be remembered that a large part of the habit of obedience to a government rests upon associations with ancient institutions and ancient names; and that a sudden introduction of foreign laws and usages into a dependency is likely to breed serious discontent, and to embarrass the operations of the government, even if these laws and usages should be intrinsically better than those which they supplant. An example of such a wanton change of laws is afforded by the conduct of the French during their short-lived possession of the island of Malta in 1798. Although the government had been, up to the moment of their arrival, in the hands of a monastic order, and although the people were completely imbued with the old Catholic ideas, the French nevertheless, almost immediately after they had assumed the administration of the government, set about introducing the modern laws of revolutionized France, such as the secularization of the church property, the suppression of convents and monasteries, the abolition of entails, and so forth. The consequence was that the inhabitants

soon rose in insurrection against their new rulers, and called in the assistance of the English, who blockaded Valletta, and ultimately compelled the French garrison to capitulate. The recent conduct of the French at Algiers appears likewise to have been dictated in some respects by a similar disregard for the peculiar opinions and usages of the native inhabitants.

If the rulers of a ceded or conquered dependency should be determined, by the considerations to which we have adverted, to retain the body of the native institutions and usages, then another class of difficulties arises.

The government of a dependency which is virtually dependent must be superintended and mainly conducted by the dominant country, and, to a certain extent, by natives of the dominant country. Now the natives of the dominant country who are employed in governing a dependency are necessarily ignorant, to a great degree, of its peculiar institutions, and they are perhaps ignorant of its language. They may, however, to a considerable extent, overcome these obstacles to good government. They may acquire a competent knowledge of the peculiar institutions of the country, and before deciding on any legislative innovation they may consult a person versed in the native law. They may also learn the language of the place; a task of no great difficulty for a few educated persons, though impossible for an entire population.

Yet, however unprejudiced and candid such a

ruler may be, it is scarcely to be conceived that he should not have some undue bias in favour of the institutions of the dominant country, and against the institutions of the dependency: so that he is likely to incline to the improper introduction of the former in the place of the latter, and may thus not only produce confusion in the laws of the place, but may also unnecessarily offend the opinions and disturb the habits of the people.

After all, the rulers of such a dependency may find that their best intentioned efforts to promote the general welfare are misconstrued, attributed to bad motives, and received with coldness, mistrust, and ingratitude, either because they do not coincide with the prevailing sentiments and opinions of the people, or because they emanate from natives of the dominant country.

These remarks show that much mutual forbearance, on the part both of government and people, is requisite in a dependency so situated.

On the one hand, the rulers should not expect that the government of such a dependency is to be as easily and satisfactorily conducted as that of an independent state; and they, therefore, should be prepared to meet with many crosses and disappointments in the management of its affairs. The people are inevitably prejudiced against them and their mode of carrying on the government, and involuntarily refer measures and actions to standards of which the rulers are ignorant; while *they* naturally see the prejudices of the people in a strong light,

because those prejudices are different from their own. Under these circumstances, it is the duty of such a ruler to view with an indulgent and favourable eye the character and manners of the people placed under his care; to be kind to their virtues, and a little blind to their defects. As Coleridge says in his remarks on Sir A. Ball: "A more venial and almost desirable fault can scarcely be attributed to a governor than that of strong attachment to the people whom he is sent to govern."*

On the other hand, the people in such a dependency should remember that they hold their peculiar laws and institutions at the pleasure of the dominant country; and that the government can at any moment throw everything into confusion, by setting the public opinion of the dominant country against the dependency, and by raising a cry that its interests are sacrificed to those of its dependency; which, though not a popular cry in the dependency, is a popular cry in the dominant country. They should remember that the government, by retaining the native institutions of the dependency, necessarily subjects itself to some of the errors of ignorance; since persons who are not natives of the dependency cannot thoroughly understand its peculiar institutions. They should also make allowance for the natural preference of nearly all men for their native laws and usages, and their sincere desire to introduce them in other countries, without any intention of

* The Friend, vol. iii. p. 325.

aggrandizing themselves, or depressing the natives. They should likewise be prepared for some religious repugnance, for the religious intolerance which shows itself in opinion, if not in the law, and perhaps for attempts to convert them to the faith of the dominant country, which may spring from benevolent though mistaken motives.

In general, the natives of such a dependency should always seek to put a fair and candid construction on the conduct of the government; they should abstain from condemning it hastily, and should make due allowance for the difficulties and disadvantages of its position; they should excuse slight errors of judgment where they see a generally good disposition, and should remember that the ultimate appeal lies to a quarter (viz. the public opinion of the dominant country) where there is little knowledge of the peculiar opinions and feelings of the dependency, and little disposition to sympathize with them. Moreover they should avoid the error of blaming a political measure, merely because they themselves had no concern in it.

So great are the disadvantages of dependence, that it is in general fortunate for a civilized country to be sufficiently powerful to have an independent government, and to be ruled by natives. But if a civilized country is, from its size, and other natural circumstances, condemned to political dependence, it is incumbent on every wise and patriotic man whose lot is cast in it, not to lament the inevitable results of the smallness of its territory or the scantiness

of its population, or its political weakness, but to seek to procure for it all the benefits compatible with its position, and to render its dependence on the dominant country as little onerous as possible.

Having concluded these general remarks on the tendency of a dominant country to make unnecessary changes in the institutions of a ceded or conquered dependency, by the introduction of its own peculiar institutions, we proceed to consider somewhat more in detail the circumstances which ought to determine the dominant country to a greater or less extension of its peculiar institutions to such a dependency.

The preceding remarks have been intended to show that, unless the dependency is a colony which has carried out with it the laws, opinions, and customs of the dominant country, it is subject to violent changes of its laws, dictated by the insufficient knowledge of its peculiarities, and the reasons of such peculiarities, which is possessed by its rulers, or by their want of sympathy with the opinions and usages of its people.

When the dependency is a colony of the dominant country, which settled in an uninhabited district, or which has reduced the native population to a condition of slavery, or has completely absorbed them into its own body (as was the case with the Greek colonies on the coasts of the Mediterranean), or which has expelled or exterminated the aboriginal inhabitants (as has been done by the Spanish and English

colonies in America and Australia)—there is a general agreement between the laws of the mother-country and the dependency, and the mother-country has no inducement to disturb the laws of the dependency, for the purpose of introducing its own laws in their stead.

The question can arise only respecting a dependency which, not being a colony of the dominant country, possesses peculiar laws and institutions, either formed under an independent government of its own, or derived from its own mother-country. The cases in which the question arises may be considered to be threefold; the difference between them being, however, a difference only of degree.

In the first of the three cases, a civilized nation acquires a territory completely occupied by a people in a low state of civilization, and governs it as a dependency. The British dominions in Hindostan afford a remarkable and well-known example of this case of the problem. In the circumstances just stated, it is desirable to introduce into the half-civilized dependency as much as possible of the laws of the civilized dominant country. But unless the introduction of the institutions of the dominant country into a dependency thus situated be made with great caution, circumspection, and skill; and unless the persons employed in administering the government qualify themselves for the task by much previous study and reflection, great evils may be expected to result from it, as has been proved by the experience of the English rule in the East Indies.

The following are some of the evils which have resulted from the rule of the English in the East Indies. Hasty and crude acts of legislation have emanated from the government, making extensive changes in large classes of existing rights, and thereby creating a general feeling that property and industry are insecure.* This conduct of the British government in India has been the more remarkable, since the English are in general averse to sweeping political changes, and are not, like the French, accustomed to carry out principles in practice to their furthest logical consequences. While these sweeping and almost revolutionary changes of property have been going on, no attempt has been made to dissolve the alliance between the law and the

* "Our countrymen complain that they are refused the trial by jury in civil causes; that the judges have, in many particular cases, acted partially and illegally; that they have denied Magna Charta to have force in India, &c. &c. But the wrongs of the natives are much more insupportable. The judges, in order to extend their authority, have given to the Act of Parliament the most literal, rigid, unfair construction: for example, all persons who rent farms of the company are, they say, servants of the company, and therefore, by the letter of the Act, subject to the English court of justice. By such means, multitudes of Indians are brought under the English law; that is, a complicated system of law, so voluminous that years of study are requisite to enable even Englishmen to acquire a knowledge of it, is at once transplanted into a country whose inhabitants are strangers even to the language in which it is written. The arbitrary institutions of a commercial republic, in which all men are equal, are made the laws of a despotic empire, where distinctions between every class of men are religiously observed, and where such distinctions are even become necessary to subordination and government. In a word, a law is given them, which clashes with their own law and their own religion, and shocks their manners and prejudices in a thousand instances."—Letter of Sir Samuel Romilly to Mr. Roget, March, 1781: in the Memoirs of Sir Samuel Romilly, vol. i. p. 157—8.

religion of the country, which is the great obstacle to social progress in Hindostan, as in the other oriental states. Up to the present day the muftis and the pundits are the only professors of Mahomedan and Hindoo law in India, and the judges and advocates have recourse to them for the solution and decision of any question belonging to their respective systems of laws, which may arise in actual practice. The code which has been prepared by the recent commission in India will for the first time confer on the Hindoos the inestimable benefit of a body of positive law, which professes to rest on merely human authority, and which may therefore be reasoned about or even altered without impiety.*

It may be remarked, that where a civilized people (such as the English in India) make any extensive and mischievous change in the laws of a people of inferior civilization, the latter are unable to resist the change, on account of the greater energy, knowledge, and resources of the ruling class, their mutual reliance and their powers of co-operation and assistance.

Although British India may have derived considerable benefit from the superior honesty and intelligence of the English office-holders, yet the practice of employing Englishmen exclusively in all important offices has, on account of the necessity of giving them high salaries and the inadequacy of the native public revenue, led to the accumulation of an

* See Trevelyan on the Education of the People in India, p. 152.

enormous mass of duties on the head of a single person, and has produced a practical denial of justice, and an abdication of the most useful functions of government, in many parts of the country. The insults often offered to the feelings of the natives by the overbearing behaviour of the English would be of less importance, if the more permanent and serious interests of the people were efficiently protected. But unhappily it seems that, in most parts of the country, life and property are scarcely more secure than they were under the native governments, and that the main benefit which the people have derived from the British rule is the exemption from foreign invasion.*

Though a prospect of benefit to the people of India has been recently opened by the measures of the government for the improvement and diffusion of education, and the more extended employment of the natives in the public service, it is lamentable to think how little good has hitherto resulted to them from the acts of a government which has of late years been, perhaps, the most benevolent which ever existed in any country.

In the second of the three cases, a civilized nation acquires a dependency inhabited by a civilized people, but only thinly or partially inhabited, and, therefore, offering facilities for the settlement of immigrants from the dominant country. This is the case with Canada, and it is a case which offers peculiar difficulties in practice. The struggle of the

* See Shore's Notes on India.

two populations on the same soil is likely to lead to a conflict between them, which will not be settled without the interference of the dominant country. It is difficult to decide upon what principles this interference should be made. On the one hand, the new immigrants may reasonably demand the alteration of any laws which debar them from occupying and cultivating the land, or which otherwise impede their industry or prosperity. On the other hand, the original possessors of the country have a just ground of complaint, if the institutions of the dominant state are introduced to a greater extent than is necessary for accomplishing these purposes.

In the last of the three cases, a civilized nation acquires a dependency inhabited by a civilized people, but fully peopled and affording no facilities for the introduction of new settlers. In this case it is fit that the dependency should retain its peculiar institutions; that its government should, as far as possible, be administered by natives; and in short that the dominant country should create as little disturbance in the political management of the dependency as is consistent with its dependent position. The provinces of the Roman state afford an example of the mode of government in question; for although the Roman provincial governors were often rapacious, insolent, and cruel, yet (as has been already remarked)* it was the policy of the Roman government to interfere sparingly with the native institutions of the provinces. Every reader of the New

* Above, p. 119.

Testament is aware how little the Romans interfered with the very peculiar institutions of the province of Judæa, before they were provoked by the insubordination of the Jews to destroy Jerusalem.

Lombardy is a modern instance of the same sort of rule: for though this dependency of the Austrian empire is subject to the general control of the imperial government, yet the details of its administration are managed by natives, and the Italian is the language of the government and the law. The governments of Malta and the Ionian isles afford other instances of the same system.

It may be remarked generally of dependencies belonging to the latter class, that when any of their laws is changed, the change ought to be made in the spirit of the existing institutions.

But if it be inexpedient for the government to change suddenly the *laws* of a dependency, it is still more inexpedient for the government to attempt to make a sudden change in its *language*. The acquisition of a new language is a slow and laborious process; and it implies an amount of diligence, leisure, and intelligence which cannot be expected of an entire community of adults. The great mass of mankind never acquire a language by study; they only know the language which they imperceptibly imbibe during infancy and childhood. It is no more possible for a government, by the expression of its will, and by offering rewards or threatening punishments, to change suddenly the language of its subjects, than to add a cubit to their stature or to

give them a sixth sense. A government may publish its laws and other acts in a foreign language, but it cannot cause the people to understand them; it may prohibit advocates from pleading in their native tongue, but it cannot enable them, however much they may desire it, to plead in an acquired language; it may declare that contracts and testaments made in the language of the country are invalid, but it cannot enable parties to contracts or testators to comprehend the meaning of instruments drawn in a foreign tongue. Many examples might be given of the mischievous effects which have been produced by an attempt to force the language of a government upon the people. Thus when Joseph II. attempted to treat Hungary as a dependency, to incorporate it with Austria, and to reform its laws by his own authority, the people for a time submitted, unwillingly, to his useful though too hastily introduced reforms; but when he ordered St. Stephen's crown to be carried to Vienna, and issued an edict making German the language of government throughout Hungary, the people rose in insurrection against him.* In like manner, the measures of the King of Holland for introducing the use of the Dutch language into Belgium, in the place of the French language which was spoken by the educated classes, created a general discontent throughout Belgium, and contributed materially to produce the Belgian revolution, and the consequent separation of Belgium from Holland.

* See note (N.) at the end of the volume.

Without going at length into the question of the influence of a common language in assimilating the opinions and customs of different parts of the same empire, and in cementing national union, we may remark that the use of a common language is consistent with the existence of the strongest antipathies between different communities, as is proved by the mutual hatreds of independent states, derived from the same national stock and speaking the same language, in ancient Greece, and in modern Italy and Germany. Even, therefore, if a dominant country should succeed in diffusing its own language among the people of a dependency, it might fail in creating the attachment to its government, which was the end sought by the introduction of its language. And if by a forcible or over-hasty introduction of its language it engendered discontent in the dependency, it would produce an effect the very opposite to that intended; since, instead of attaching the people of the dependency to itself, it would strengthen their aversion to its supremacy. It is obvious that the best mode of incorporating a body of people with the rest of an empire is to render them contented and happy; and that any measure which renders them discontented is likely to prevent that incorporation.

In like manner, it can rarely happen that any reason should exist why the supreme government should attempt to change the religion of a dependency, whose people have a religion different from that

of the dominant country. The *religion* of a people is in general less easily changed by a government than their language. The history of Europe abounds with examples of the misery produced by the ineffectual attempts of governments to convert their subjects to another creed by force or civil disabilities. Even Mr. Gladstone (whose principles seem to lead to the conclusion that a sovereign legislature ought to use all the means in its power for diffusing among its subjects the religious faith which the majority of its members believe to be true) admits that a dominant country is not bound to deprive a church in a dependency of its endowments, although the doctrines of that church may be different from those of its own established church or churches.* Indeed, dependencies have been so far treated as separate from the dominant country for religious purposes, that the English North American colonies were regarded as asylums against religious persecution, and no attempt was made by the government of the mother-country to interfere with their peculiar religious tenets and modes of church government.

Exclusion of natives of the dependency from offices in their own country.

The self-partiality which leads the dominant country to introduce its own laws, language, and religion into a dependency, without due regard to the circumstances and interests of the latter, also brings upon the dependency other evils of a similar nature. Thus it causes the appointment of natives of the dominant country to offices in the dependency,

* The State in its relations with the Church, ch. viii. § 68. (p. 276.)

and the exclusion of natives of the dependency from them, without sufficient reason for the preference.*

The following remarks will serve to indicate the principal disadvantages arising to the dependency from this source.

The natives of the dominant country are in general imperfectly acquainted with the circumstances

* The following account of the former practice in this respect in the English dependencies is given by Long, in his History of Jamaica:—" 'Without doubt,' says Davenant, 'it must be very prejudicial, both to the southern and northern colonies, that many offices and places of trust there should be granted by patent to persons in England, with liberty to execute such employments by deputies. By which means, they are generally farmed out to indigent persons, who grind and fleece the people; so that, although many of the inhabitants are rich, sober, and judicious men, yet they are excluded from offices of trust, except such as are chargeable in the execution; which is inconsistent with all the rules of well-governing a country.' There is, I am sorry to own, too much of prophetic truth in this remark. The natives in our colonies, as if proscribed for some defect of ability or good morals, cannot, without the utmost difficulty, creep into any lucrative employments. Having little, if any, interest among the distributors of office, they are driven to an humble distance; whence they have the mortification of observing the progress to wealth of those more favoured subjects, who are sent across the ocean to pamper themselves on the fatness of their land. The most lucrative offices in this island (the governor's excepted) are granted by the crown to persons residing in England, and by these patentees are farmed or rented to deputies and sub-deputies acting in Jamaica, who remit annually several thousand pounds to their principals. The rent of these deputations being screwed up to the very highest pitch, some of the officers have made no scruple formerly to exert their utmost industry towards enlarging their fees and perquisites at the expense of the aggrieved inhabitants. Before these places became so profitable as to be objects of sufficient value to the ministry for gratifying their dependents, the assembly made some attempts to restrain the patentees."—(History of Jamaica, vol. i. p. 79, 80.) On the preference of Spaniards to natives for offices in Naples, the Netherlands, and the American colonies, see above, p. 138, 150.

of the dependency, with its laws and customs, and sometimes with its language. They are, therefore, not qualified to fill any office in it, of which the duties are not merely mechanical. The appointment of natives of the dominant country is also naturally viewed with dislike by the people of the dependency, and therefore renders the government unpopular among those who are immediately subject to it. Moreover, the exclusion of the natives of the dependency from offices in their own country diminishes their incentives to industry and useful exertion. It is, likewise, more expensive to employ natives of the dominant country in the public offices of a dependency, than natives of the dependency itself; since the former must be compensated for the sacrifice which they make in leaving their home and native country, and often in living in a climate pernicious to their health.

Appointment of natives of dominant country to offices in the dependency, without a due regard for their qualifications.

Not only, however, is the dominant country induced by its self-partiality to appoint natives of its own to offices in the dependency, but from its general indifference about the welfare of the dependency; it often selects these persons without a due regard for their qualifications. Hence the wish to provide for political partizans or private friends, by placing them in public offices, has frequently been gratified at the cost of dependencies. This is no modern evil; for, from the time of the Romans downwards, a provincial governorship or other appointment seems to have been regarded as a

legitimate means of repairing a shattered fortune.*

The preceding remarks respecting the appointment of natives of the dominant country to offices in a dependency are applicable, though not with

* "The French colonies, settled by profligate men who fled from the restraints or punishment of the law, seemed at first to stand in need of nothing but a strict police; they were therefore committed to chiefs who had an unlimited authority. The spirit of intrigue, natural to all courts, but more especially familiar to a nation where gallantry gives to women an universal ascendant, has at all times filled the highest posts in America with worthless men, loaded with debts and vices. The ministry, from some sense of shame, and the fear of raising such men where their disgrace was known, have sent them beyond sea, to improve or retrieve their fortunes, among people who were ignorant of their misconduct. An ill-judged compassion, and that mistaken maxim of courtiers, that villany is necessary, and villains are useful, made them deliberately sacrifice the peace of the planters, the safety of the colonies, and the very interests of the state to a set of infamous persons only fit to be imprisoned. These rapacious and dissolute men stifled the seeds of all that was good and laudable, and checked the progress of their prosperity which was rising spontaneously."—Raynal, b. xiii. (vol. iv. p. 289).

"Armed with such various authorities, and possessing such transcendent pre-eminence and privileges as I have described, it is not to be expected, from the common fallibility of human nature, that every colony-governor (placed at so great a distance from the mother-country) should, on every occasion, *bear his faculties meekly*. Great caution is therefore undoubtedly necessary, on the part of a British minister, in the choice of persons for a trust of so great weight and dignity; the powers with which our plantation governors are invested being more extensive than those which the laws of England allow to the sovereign himself. It is however a melancholy truth, that party merit and connexions are commonly the most forcible recommendations with which a candidate for a distant government can present himself; and that persons equally devoid of character, ability, and fortune, have sometimes been sent to preside in our most important settlements, as if justice and public virtue were best administered and promoted by men most distinguished for ignorance and profligacy, and that they would prove the best protectors of other people's fortunes, who by vice and profusion had dissipated their own!"—Edward's West Indies, b. vi. c. i. (vol. ii. p. 390). See also Long's Jamaica, vol. i. p. 27.

quite equal force, to dependencies of all descriptions.

If the dependency is a colony of the dominant country, and its founders have consequently taken out with them its law, language, religion, and customs; natives of the dominant country are generally fitted, or can, without any great difficulty, fit themselves, for public offices in the dependency. But unless there should be in such a dependency an insufficient number of persons competent for public offices, it is inexpedient, for the reasons already assigned, systematically to appoint to them natives of the dominant country. If the dependency have been acquired by conquest or cession, and if its laws, language, religion, and customs should in consequence be different from those of the dominant country, it is extremely difficult for a native of the dominant country to qualify himself for the performance of official duties in the dependency. It may sometimes be necessary (though this necessity can seldom arise) to introduce the laws of the dominant country into a dependency of the latter sort. If such a necessity should occur, natives of the dominant country must be employed for the purpose of introducing them.

Inasmuch as the natives of a dependency do not aspire to offices in the dominant country, they reasonably expect to be appointed to those in their own little community. Not only, therefore, are their feelings wounded by their exclusion from these offices, but this injury to their feelings is aggravated

by the incompetency of the natives of the dominant country who are appointed to them. The appointment of incompetent persons to offices, and the exclusion of competent persons from them, is of peculiar importance in a dependency; for, as will be more fully shown in the next chapter, much depends, under any circumstances, upon the character and composition of the official body in a dependency which is not virtually independent. They cannot fail to exercise a considerable power; partly, on account of the necessary ignorance of the home government respecting the dependency, and of their having the chief means of furnishing it with information; partly, on account of the distance of the dependency from the dominant country, and the consequent latitude of discretion which must be allowed to them in the execution of political measures.

It may be here remarked that the arrangement of placing the civil and military government of a dependency under a common head, which convenience or economy has dictated in the early stages of a new settlement, or under other peculiar circumstances, has often been continued for a longer time than the circumstances of the case justified, and when a due regard for the interests of the dependency would have led to a separation of the military command from the civil government.

Interests of a dependency liable to be sacrificed

Owing to the general indifference and ignorance of the dominant country and the supreme government respecting the condition of a dependency, they

to the party interests of political parties in the dependency.

do not think about its concerns in ordinary times and under ordinary circumstances. But if, on any extraordinary occasion, any question affecting a dependency should happen to excite the attention of the dominant country and the supreme government, it is rarely treated (especially if the form of the supreme government be popular) with reference to the true interests of the dependency itself, or even of the dominant country as regards the dependency; but it is commonly sacrificed to the temporary interests of the political parties in the dominant country which are contending for the possession of political power. In this manner the people of the dependency become the sport of questions and interests in which they are not concerned, and the nature of which they do not even understand.

It may be observed generally, that the more forbearing, considerate, and rational the conduct of the dominant country towards its dependency may be, the less onerous is the dependent condition of the latter, and the less cogent are the objections to its continuance. On the other hand, the more irrational and unwise may be the conduct of the dominant country, and the more it sacrifices the permanent interests of the dependency to its own party conflicts, (conflicts which are alien not only to the interests, but also to the feelings of the dependent people,) the more desirable is it that the dependency should enjoy practical, and ultimately obtain legal, independence.

Before we quit this topic we may remark generally, that in consequence of the political relation which subsists between a dependency and the dominant country, the dependency bears a share, to a greater or less extent, of many of the calamities in which the dominant country may be involved through the errors of its government or from any other cause. For example, if the dominant country should be plunged in wars, either from the necessity of self-defence, or through its own ambition, or the ambition of other states, the dependency is necessarily a party to them. Hence its trade may be disturbed, its merchant-vessels exposed to the risk of capture, and its territory even made the theatre of war, without its having done anything to provoke hostilities, or having had any means of preventing them, and although it is only, as it were, a formal party to the dispute.

The dependency is involved in the wars of the dominant country.

We shall consider at length, in the next chapter, the disadvantages arising to a dependency from the various forms which may be given to its immediate government. We will here briefly indicate a class of evils produced by its subjection to two distinct governments.

Evils arising to a dependency from its subjection to two governments.

It has been stated above, that the establishment of a local subordinate government is intended as a remedy against the evils arising from the impossibility of maintaining a sufficiently rapid communication between the supreme government and the people of the dependency.* The remedy is, however, imperfect; for, as the subordinate does not supersede

* Above, Chap. IV.

the supreme government, cases not unfrequently arise in which applications are made by inhabitants of the dependency to authorities in the dominant country. There is likewise the enormous evil of appeals from courts in the dependency to courts in the dominant country. Sometimes the existence of a subordinate government aggravates the evils naturally arising from the distance of the supreme government, since an applicant may be referred backwards and forwards from one government to the other, and may be unable to obtain a distinct or final answer from either. The contrivance of a subordinate government renders the government of a distant territory *possible*, but does not render it *good*.

CHAPTER X.

The respective Inconveniences of the various Forms which may be given to the immediate government of a Dependency.

FROM the disadvantages affecting the dominant country in consequence of its relation to the dependency, and the disadvantages affecting the dependency in consequence of its relation to the dominant country, we proceed to certain disadvantages (affecting one or both of the related communities) which cannot be referred exclusively to either head. The disadvantages now in question are the respective inconveniences of the various forms which may be given to the immediate government of a dependency. For our present purpose, these various forms may be conveniently arranged under the following general descriptions. 1. A body of persons representing the inhabitants of the dependency, or representing a larger or smaller part of them, exercises a constitutional control over the executive authority; or, in other words, it shares the powers of government, to a larger or smaller extent, with the authority in which the executive powers exclusively or principally reside. 2. The executive authority is not constitutionally controlled by any such body of representatives; or, in other words, the powers of government are exclusively possessed by

the authority in which the executive powers are placed.

In considering the inconveniences of the various forms which may be given to a subordinate government, we shall begin with the inconveniences of the forms which fall under the latter description.

Inconveniences of the subordinate governments in which the executive authority is not constitutionally controlled by a body representing the dependency.

Where the form of the subordinate government falls under the latter description, the dependency may be governed in either of the following modes. The principles of its legislation and administration may be determined, and their details may be habitually conducted, by the supreme government or the home department of the subordinate government; or the local government may manage its legislation and administration without any frequent interference from any authority in the dominant country. In either of the supposed cases, the dependency is exposed to the evils naturally suffered by the governed from a government over which they have no constitutional control; and in the first of those cases, it is also exposed to the evils naturally suffered by the governed from a government placed at a distance from their territory. It may be remarked, however, that the dependency, in the first of the supposed cases, would be a dependency in form rather than in substance; for as its legislation and administration would be habitually managed by direct interferences from the dominant country, it would, in substance, be directly subject to the supreme government.

In the second of the supposed cases, the local

government may reside exclusively in the governor (or other head of the local authorities); or inferior officers of the local government, appointed by the home government, and holding their offices permanently, may control the governor in the exercise of his powers.

Where the local government resides exclusively in the governor, it is probable that the dependency will suffer from his incapacity, if not from other mischiefs naturally consequent on his uncontrolled authority. Generally speaking the governor of a dependency is incompetent to govern it in a manner fitted to promote its interests, on account of his imperfect acquaintance with its position and circumstances; and where he is not controlled by a representative body familiar with its position and circumstances, the natural consequences of his ignorance are not prevented or even corrected. It will appear sufficiently from a few brief considerations, that the governor (generally speaking) is imperfectly acquainted with the concerns of the dependency, or, for some other reason, is incompetent to manage them to its advantage. In the first place, he is commonly a native of the dominant country, or not a native of the dependency; and on his accession to his office, he, therefore, is necessarily ignorant of the concerns of the latter. In the next place, as the office is rarely held by the same person for any long period, a governor is commonly removed from it just as he has acquired some knowledge of the concerns of the dependency; and, on his removal, he is followed by some successor who probably

brings the same ignorance to the office, and who is probably removed from it just as he is beginning to qualify himself for it. This frequent change of governors imperfectly acquainted with the position and circumstances of the dependency, and unchecked by a representative body familiar with them, tends to produce (independently of other inconveniences) an instability in the legislation and administration of the dependency, which is highly detrimental to the interests of its inhabitants.* In

* This inconvenience of a frequent change of governors is illustrated by the following remarks of Raynal, in his account of the administration of the French West India islands under the old French monarchy:—"The few governors who escaped corruption, meeting with no support in an arbitrary administration, were continually falling from one mistake into another. Men are to be governed by laws and not by men. If the governors are deprived of this common rule, this standard of their judgments, all right, all safety, and all civil liberty, will be extinct. Nothing will then be seen but contradictory decisions, transient and opposite regulations and orders, which, for want of fundamental maxims, will have no connexion with each other. If the code of laws was cancelled, even in the best constituted empire, it would soon appear that justice alone was not sufficient to govern it well. The wisest men would be inadequate to such a task. As they would not all be of the same mind, and as each of them would not always be in the same disposition, the state would soon be subverted. This kind of confusion was perpetual in the French colonies, and the more so as the governors made but a short stay in one place, and were recalled before they had time to take cognizance of anything. After they had proceeded without a guide for three years, in a new country, and upon unformed plans of police and laws, these rulers were replaced by others, who, in as short a space, had no time to form any connexion with the people they were to govern, nor to ripen their projects into that justice, which, when tempered with mildness, can alone secure the execution of them. This want of experience, and of precedents, so much intimidated one of these absolute magistrates, that, out of delicacy, he would not venture to decide upon the common occurrences. Not but that he was aware of the inconveniences of his irresolution, but, though an able man, he did not think himself qualified to be a legislator, and therefore did not choose to usurp

the last place, it often happens (from causes adverted to in the preceding chapter) that the governor is a military or naval officer, and, therefore, is unfamiliar with the principles and practice of civil government, as well as imperfectly acquainted with the position and circumstances of the dependency.

Where the governor is controlled in the exercise of his powers by such inferior officers as we have described above, another set of evils arises.

Officers of this sort, as holding their offices permanently, would probably know more than the temporary governor respecting the position and circumstances of the dependency; and to this extent their influence over the governor would produce a better administration of the government than if his power were altogether uncontrolled.

But the officers controlling the governor would form an oligarchy legally independent of the people of the dependency, and practically almost independent of the supreme government.

Such an oligarchy, unchecked by a body representing the dependency, would be more likely to use their powers for their own advantage and to the disadvantage of the dependency, than a governor in a similar predicament; for, as public opinion is always a less powerful restraint upon a body than

the authority of one." Settlements of Europeans in the East and West Indies, b. xiii. (vol. iv. p. 291. Engl. Transl.) Raynal here confounds a government not administered according to laws (above, p. 15 sqq.) with a government in which the laws are frequently altered; but the general drift of his remarks is sufficiently intelligible.

an individual, the opinion of the people of the dependency, and of the government and people of the dominant country, would impose a more effectual check upon an uncontrolled governor than upon an uncontrolled official oligarchy. It may be added, that the check imposed upon such an official oligarchy by the opinion of the people of the dependency would be almost nugatory, if (as commonly happens) the members of it were natives of the dominant country and not of the dependency itself.

As an official oligarchy thus situated is imperfectly checked either by the direct interferences of the supreme government, or by the indirect influence of the opinion of the dependency or the dominant country, frequent disputes naturally arise between the members of it, about their respective shares in the government, or about their respective emoluments or ranks; to the neglect of the affairs and interests of the dependency, and perhaps to the danger of a disturbance of its tranquillity. A striking example of the evils arising from this form of government is afforded by the conduct of the various local governments in India, before the proceedings in Hastings's trial and other circumstances had forcibly turned the attention of the English public to Indian affairs.

We have begun by supposing that this form of government would be better than that of an uncontrolled governor, on account of the greater knowledge of the concerns of the dependency possessed by the members of the official oligarchy. But if

(as commonly happens) they are natives of the dominant country, their knowledge of the real condition and interests of the dependency would, in many cases, and especially in the case of a dependency acquired by cession or conquest, be not much greater than that of a temporary governor; although they would naturally excel him in a knowledge of the routine of the actual government. Consequently, this circumstance of superiority in the oligarchical form of government would have little in it to compensate for the various respects in which it is inferior to that of an uncontrolled governor.

It may be here remarked in conclusion, that where the temporary governor is not, according to the constitution of the government, subjected to the legal control of such an oligarchy, he is in general controlled by one in fact. On account of his ignorance of the position and circumstances of the dependency, and, above all, of the routine of its actual government, he must trust to those who cannot fail to have acquired a considerable knowledge of the latter, although their knowledge of the former may be but superficial. Whenever, therefore, the executive government is uncontrolled by a body representing the community, all the powers of the local government will, in general, be vested, formally or virtually, in the hands of an oligarchy of the worst description:—an oligarchy unchecked by public opinion, and, if its members are not natives of the dependency, having little or no knowledge of the real condition and true interests of the governed, and little or no sympathy with their opinions and feelings.

It should not be overlooked that a popular form of the supreme government counteracts to a considerable (or, at least, to some) extent the evils arising from the absence of popular institutions in a dependency. Although the popular form of the supreme government does not afford to the inhabitants of a dependency any of the characteristic securities of popular institutions, (namely, a power of electing their own representatives,) yet the publicity of the system of government, and the probability that some member of the supreme legislative body will take up their cause and obtain a hearing for them, afford them a considerable protection.

It may be here observed, that in rude communities the governor of a dependency has great facilities for throwing off his dependence, on account of the complete organization of the government over which he presides, the usual discontent of the dependency with the dominant country, and the small control exercised by the latter over the former. In barbarous or half civilized countries, the defects in the administrative machinery of the government, and in the means of communication, have led to various contrivances for securing the dependence of the provincial governors: for example, the shortening their period of office, the employment of agents to watch and report their proceedings, the fomenting of disputes between different governors, and so on.* These contrivances, however, have often failed to ac-

* Above, p. 187. See the description of the policy of the Portuguese with respect to their possessions in the East Indies, cited in note (O.) at the end of the volume.

complish their end; for the defections of satraps in the ancient Persian kingdom, of governors under the Roman empire, and of pashas and other similar officers in Oriental states in modern times, have been frequent, and have produced repeated wars, with their attendant evils.

Inconveniences of the subordinate governments in which the executive authority is constitutionally controlled by a body representing the dependency.

Where a representative body of the foregoing description has a share in the government, the dependency escapes the evils which would naturally fall upon it, if the government resided exclusively in the executive authority. But where a dependency (not doomed to dependence by its natural condition and circumstances) has such a security against the executive authority, its subjection to the dominant country is likely to be nominal rather than real. Such, at least, is the probable consequence of the security, where the representative body is invested with extensive powers, and where its members (from their holding their places by popular election, or from some other cause) represent the opinions and feelings entertained by the mass of their countrymen. It is extremely difficult to reconcile the powers of such a representative body with the virtual subjection of the dependency to the dominant country. If the government of the dominant country substantially govern the dependency, the representative body cannot substantially govern it; and, conversely, if the dependency be substantially governed by the representative body, it cannot be substantially governed by the government of the dominant country. A self governing dependency

(supposing the dependency not to be virtually independent) is a contradiction in terms.

Various plans have been tried or suggested for giving a dependency efficient popular securities against misgovernment, and for reconciling those securities with its perfect dependence on the dominant country. It should, however, be observed, that the trial of these plans has been nearly confined to the dependencies of England, since England is nearly the only country which in modern times has given its dependencies popular institutions.

The first plan which we shall examine is that proposed by Adam Smith, in his "Wealth of Nations," with reference to the English North American colonies. We will give this plan in his own words, for the purpose of explaining the views with which he proposed it. (The "Wealth of Nations," it should be observed, was first published in the year 1775, in which the American war of independence broke out.)

"Should the parliament of Great Britain be ever fully established in the right of taxing the colonies, even independent of the consent of their own assemblies, the importance of those assemblies would from that moment be at an end, and with it, that of all the leading men of British America. Men desire to have some share in the management of public affairs, chiefly on account of the importance which it gives them. Upon the power which the greater part of the leading men, the natural aristocracy of every country, have of preserving or defending their

respective importance, depends the stability and duration of every system of free government. In the attacks which those leading men are continually making upon the importance of one another, and in the defence of their own, consists the whole play of domestic faction and ambition. The leading men of America, like those of all other countries, desire to preserve their own importance. They feel, or imagine, that if their assemblies, which they are fond of calling parliaments, and of considering as equal in authority to the parliament of Great Britain, should be so far degraded as to become the humble ministers and executive officers of that parliament, the greater part of their own importance would be at an end. They have rejected, therefore, the proposal of being taxed by parliamentary requisition, and, like other ambitious and high-spirited men, have rather chosen to draw the sword in defence of their own importance."

* * * * *

"The parliament of Great Britain insist upon taxing the colonies, and they refuse to be taxed by a parliament in which they are not represented. If to each colony, which should detach itself from the general confederacy, Great Britain should allow such a number of representatives as suited the proportion of what it contributed to the public revenue of the empire, in consequence of its being subjected to the same taxes, and in compensation admitted to the same freedom of trade with its fellow subjects at home, the number of its representatives to be

augmented as the proportion of its contributions might afterwards augment; a new method of acquiring importance, a new and more dazzling object of ambition, would be presented to the leading men of each colony. Instead of bidding for the little prizes which are to be found in what may be called the paltry raffle of colony faction, they might then hope, from the presumption which men naturally have in their own ability and good fortune, to draw some of the great prizes which sometimes come from the wheel of the great state lottery of British politics. Unless this or some other method is fallen upon (and there seems to be none more obvious than this) of preserving the importance and of gratifying the ambition of the leading men of America, it is not very probable that they will ever voluntarily submit to us." *

The plan here proposed is limited in its terms to the British colonies of North America; but, as the reasons advanced in support of it are general, they would apply to every dependency which has made any considerable progress in civilization, or possesses popular securities against misgovernment.

It may be objected to this plan, that any colony to which it might be applied, would cease to be a dependency; since its inhabitants would become, in common with the inhabitants of the dominant country, directly subject to the supreme government. Consequently, the plan would solve the difficulty respecting the best constitution of a subor-

* B. iv. ch. 7.

dinate government, by abolishing the subordinate government altogether. The change in the relations of the dominant country and the dependency which would be affected by its adoption, would resemble that which would have been produced in the relations of England and Ireland by the incorporating union of 1800, if the events of 1782 had not occurred. Adam Smith, indeed, seems to have perceived that such would be the effect of his proposal. For, having remarked in a subsequent part of his work, that "by the Union with England the middling and inferior ranks of the people of Scotland gained a complete deliverance from the power of an aristocracy which had always before oppressed them," and that "by an union with Great Britain the greater part of the people of all ranks in Ireland would gain an equally complete deliverance from a much more oppressive aristocracy," and having added "that no oppressive aristocracy has ever prevailed in the colonies;" he proceeds as follows: "Even they, however, would in point of happiness and tranquillity gain considerably by *an union with Great Britain.* It would at least deliver them from those rancorous and virulent factions which are inseparable from small democracies, and which have so frequently divided the affections of their people and disturbed the tranquillity of their governments, in their form so nearly democratical. In the case of a total separation from Great Britain, which, unless prevented by an union of this kind, seems very likely to take

place, those factions would be ten times more virulent than ever." *

But the main objection to the plan (an objection which its author has not noticed) lies in the distance of those colonies from England. Where a supreme government is prevented by distance (or by any other cause) from communicating rapidly with any of its territories, it is necessary that the distant territory should be governed as a dependency.† Consequently, even if the colonies had sent representatives to Parliament, agreeably to the plan recommended by Adam Smith, they must still have been governed as dependencies: that is, by subordinate governments completely organized, and possessing every power consistent with their subordinate character. But since the colonies would still have been governed as dependencies, they would still have thought themselves in need of popular securities against the executive departments of their local governments. They would probably have thought their voice in the British Parliament an insufficient security against those departments, and have insisted on the continuance of the securities which the ancient constitutions of their governments had afforded them. Consequently, the local representative assemblies would probably have continued, and would probably have retained substantially their former structures and powers. The

* B. v. ch. 3.

† Above, Ch. IV.; and see the passage from Burke, cited in p. 184, with his remarks on the difficulties of an American representation, in Note (P.) at the end of the volume.

plan, therefore, would have failed. It would not have obviated the embarrassments arising to the mother-country from those assemblies, but would rather have brought upon her other embarrassments arising from the representatives of the colonies in her own legislature.*

It seems desirable, however, that a dependency should have a representative agent in the dominant country to watch over the interests of his constituents, and serve as an organ of communication between them and the supreme government; and the mode of determining the functions of such an agent, so as to enable the dependency to exercise a useful influence over the supreme government, is a question which deserves more attention than it has received. The agents who have been appointed by the colonial dependencies of England have been intended to serve this purpose;† but their functions have been so ill-defined, and their official powers so limited, that they have only partially accomplished the ends of their appointment. During the reign

* Adam Smith's plan seems to have been framed mainly for the purpose of rendering possible the taxation of the colonies for the benefit of the general government of the empire. He was right in thinking that the existence of a subordinate government is the principal cause of the unwillingness of a dependency to contribute to the expenses of the dominant country. But the plan proposed by him would not be practicable, if it proceeded to the entire abolition of the subordinate government; and if a subordinate government were left standing, though with a diminished legislative activity, this would go far to defeat the main purpose of his recommendation.

† Concerning the functions of a *colonial agent*, see Long's Jamaica, vol. i. p. 114.

of Charles the Fifth, there existed in Spain a high council formed of members who represented the several provinces of the monarchy. There was one councillor for Sicily, one for Naples, one for Milan, one for Burgundy, one for the Netherlands, one for Aragon, and one for Castile. By these officers the interests of each European dependency of the Spanish monarchy were, to a certain extent, represented in the councils of the supreme government.*

Although a dependency which has efficient popular securities against misgovernment cannot be kept completely in a state of practical dependence, an approach has been made in practice to the accomplishment of the purpose, by the plan which is briefly stated in the next paragraph.†

The following is a short description of the position of a dependency which is governed by the dominant country agreeably to the plan in question. In respect of its relations to foreign countries, its practical dependence on the dominant country is complete. It is related amicably to every foreign country with which the dominant country is at peace. It is related hostilely to every foreign country with which the dominant country is at war; although it does not maintain a standing army or navy of its own, and is defended by the arms of the dominant country from foreign aggression or insult.

* Ranke, Fürsten und Völker, vol. i. p. 146.

† The plan described in the next paragraph seems to agree substantially with that contemplated by Mr. Haliburton, in his account of Nova Scotia; for which see note (Q.) at the end of the volume.

The dominant country, moreover, regulates the commercial intercourse of the dependency with other independent states. In respect, however, of its internal affairs, the condition of the dependency approaches closely to a state of practical independence. The dominant country determines the form of the government by which the dependency is immediately governed. But for other purposes, the dominant country interferes as little as possible with the internal concerns of the dependency; and especially the dominant country does not require the dependency to contribute to the expenses of the general government of the empire.

It has been found in practice, that the embarrassments which are naturally brought upon the dominant country by popular institutions in the dependency may be partly obviated by the plan of government which is briefly stated in the preceding paragraph. The British American colonies, which now form the United States, were long governed in this manner; and until an attempt was made to govern them in another mode, their dependence on the mother-country was not interrupted or disturbed.

But, though the plan in question partly obviates those embarrassments, it is not free from serious inconveniences.

In the first place, although the dominant country interferes as little as possible with the internal concerns of the dependency, occasions demanding its interference with those concerns will necessarily

or naturally arise. For example, such occasions arose from the strong expression of public opinion in England against the continuation of slavery in the English West India islands,* and the disorders consequent upon the conflict of the English and French races in Canada. And the question is now agitated, whether the disposition of waste lands in the English dependencies should be made under the direction of the supreme or the home government, or whether it should be left to the local government of the dependency. But, however sparingly and temperately the dominant country may interfere with the concerns of the dependency, its interferences will be regarded with jealousy and discontent by the people of the latter, and especially of the representative body which is the organ of their opinions and feelings. Although the measures of the dominant country may be in themselves advantageous to the dependency, they may be distasteful to the people, and more distasteful still to the representatives and leaders of the people, because they are imposed upon the dependency by another community.

In the next place, in every dependency which possesses popular securities against misgovernment, there is a popular political party; and the position and objects of this party, or of its leaders, are pregnant with embarrassments to the dominant country which the plan in question would not sufficiently obviate.

This popular party, however influential in the

* See the remarks of Sir S. Romilly, cited above, p. 246.

dependency, cannot obtain the complete direction of its government, since the power of directing that government resides ultimately in the government of the dominant country. This obstacle to their absolute ascendency, the popular party naturally desire to overcome; and, as they cannot surmount it completely so long as the dependency is tied to the dominant country, they naturally desire, consciously or unconsciously, to render their country an independent state. Accordingly, the consequences which are produced in an independent state by a growing tendency to popular institutions, are different from those which it produces in a dependency. Whilst it usually resolves itself, in an independent state, into a struggle between different classes of the community, it naturally leads in a dependency to a struggle for independence. And thus, whilst the acquisition of additional power by a popular party in an independent state, naturally leads to peaceable concessions on the part of its opponents, the acquisition of such power by a popular party in a dependency is likely to lead to a mischievous, or, at the best, fruitless contest with the dominant country.

It may be remarked, moreover, that the administrative offices of the local government are commonly filled by persons who hold them permanently, and who are not appointed to them by the popular representative body, or in pursuance of its opinions and wishes. In a dependency, therefore, the leaders of the popular party are excluded from office; and in consequence of this exclusion, they are free from

a powerful restraint by which they would be checked if a chance of office was before them. A main cause of the moderation which is sometimes evinced by a party in opposition, is their chance of being called to office. It restrains them from courting the public by proposing impracticable or pernicious measures; for, on their accession to office, they would naturally be compelled, by the necessity of preserving their public reputation and influence, to attempt the execution of the public purposes which they now profess to entertain.

In order to prevent the embarrassments arising to the dominant country from the position and objects of the popular party in the dependency, the supreme government might fill the offices of the local government with persons acceptable to the body by which the dependency is represented.* In consequence, however, of this arrangement, all the officers of the local government would be virtually appointed by the representative body, and not by the supreme government or by the home department of the subordinate government; and, consequently, the arrangement would render that body complete masters of the local government, and virtually emancipate the dependency from its dependence on the dominant country.

It is manifest, therefore, that the inconveniences arising to the dominant country from popular in-

* See Lord Durham's Report on Canada; Lord John Russell's Despatch on Responsible Government; and the pamphlet entitled "Responsible Government for the Colonies."

stitutions in the dependency would not be completely obviated by the plan which we have last stated. In respect, at least, of its internal affairs, a dependency governed agreeably to that plan would be merely dependent in name.

Means of conciliating popular securities in the dependency with its virtual dependence.

If a dependency be already independent in effect, or it be expedient (for any other reason) that the dominant country should treat it as if it were, it ought to be governed on the plan which we have just examined, or on some plan of a similar purport and tendency. It may be expedient, however, that a dependency which is dependent in effect, and which it will be necessary to keep as far as possible in that condition, should receive popular securities against misgovernment; and, on the occurrence of such a case, it would be necessary to consider the means of conciliating those securities with the virtual subjection of the dependency to the dominant country. Though these conflicting objects could not be perfectly reconciled, an approach might possibly be made to the attainment of the purpose, by means of the precautions and measures which we shall now venture to suggest.

1. The subordinate government ought not to have the appearance of a supreme government.

In the first place, the constitution of the local government ought not to be conceived in a form, or its provisions expressed in terms, by which the inhabitants of the dependency might be naturally led to suppose their country a virtually independent state.

The English government, in framing the political institutions of its dependencies, has not been suf-

ficiently careful to give them such a form as might suggest the idea of their subordinate character. So far, indeed, has it been from observing this caution, that it has formed them after the model of the supreme government, and has acquiesced in the use of forms and language by the legislature of the dependency, which seem to imply that its government was co-ordinate with, and not subordinate to, the government of the dominant country.

The following passages, extracted from books of authority, which describe the form of the subordinate governments in the English dependencies in North America and the West Indies, will show the extent to which the error adverted to was likely to be created or increased by the neglect of the supreme government to observe this precaution.

"The governor, council, and assembly in every American colony," says Stokes, "is a subordinate legislature, subject to the control of the king and parliament, who are supreme over all the British empire. The governor, as the king's representative, is the first branch of this subordinate legislature, and hath the sole power of convening, adjourning, proroguing, and dissolving the general assembly. The Council, or (as it is called) Upper House of Assembly, is an humble imitation of the House of Lords. The Assembly, or (as it is called in most of the colonies on the continent) Commons' House of Assembly, represents the people at large, and is chosen by them. The proceedings of the Houses of Assembly in the colonies are conducted, and their

journals kept, in a manner much conformed to those of the two houses of parliament."*

"The British establishments in the West Indies," says Bryan Edwards, "are commonly termed King's Governments, and from what has been stated in some preceding parts of this work, the reader must have observed how very nearly their internal constitutions conform to that of the mother-country. Their different orders of judicature are exactly like those of England, and their legislatures in general respectively consist of three distinct branches, i. e., a governor representing the crown; a council or upper house; and a body of delegates representing the people at large."† . . . "Provincial parliaments, or colonial assemblies, (it matters not by what name they are called,) being thus established and recognized, we shall find that in their formation, mode of proceeding, and extent of jurisdiction within their own circle, they have constantly copied, and are required to copy, as nearly as circumstances will permit, the example of the parliament of Great Britain. The freeholders are assembled in each town or parish respectively by the king's writ; their suffrages are taken by an officer of the crown; and the persons selected are afterwards commanded, by royal proclamation, to meet together at a certain time and place in the proclamation named, to frame statutes and ordinances for the public safety. When met, the oaths of allegiance, &c., are administered

* Constitution of the British Colonies, p. 241—3.

† History of the West Indies, b. vi. ch. i. (vol. ii. p. 385.)

unto each of them, and a speaker being chosen and approved, the session opens by a speech from the king's representative. The assembly then proceeds as a Grand Provincial Inquest to hear grievances, and to correct such public abuses as are not cognizable before inferior tribunals."*

Mr. Long, in his history of Jamaica, gives the following account of the government of that island:—"In pursuance of the royal promise, and as soon as the colony was numerous and considerable enough to make it an object for civil government, a civil government was instituted, in most respects the same as what now exists. The king could not give any other form of civil government or laws than those of England, and accordingly, the form of government here resembles that of England almost as nearly as the condition of a dependent colony can be brought to resemble that of its mother-country, which is a great and independent empire. Here, as in England, we have coroners, constables, and justices of the peace. We have a Court of Common Pleas, Court of Exchequer, and Court of King's Bench. We have grand and petty juries. We have a Court of Chancery, a Court of Ordinary for the probate of wills and granting of administrations; a Court of Admiralty, for the trial of offences on the high seas, and other business, civil and maritime; Courts of Quarter Session, vestries, and in time of law martial, a Military Court. The coroner is elected by the people, the constables are appointed by the

* History of the West Indies, b. vi. ch. ii. (vol. ii. p. 419.)

justices of the peace, and the judges of all the Courts act by authority of the king's commission, under the broad seal of the island. The different orders of judicature are then exactly like those in England, subsisting by the same authority, and are instituted for the same purposes. There is somewhat the same resemblance preserved in the forms of our legislature. It is composed of three estates, of which the governor, as representing the king, is head. Having no order of nobility here, the place of a house of peers is supplied by a council of twelve gentlemen appointed by the king, which, in the system of our legislature, forms the *Upper House*. The *Lower House* is composed, as in Britain, of the representatives of the people elected by the freeholders."* "The Assembly," Mr. Long afterwards adds, "consider their privileges as derived to them from their constituents, and that they are not concessions from the crown, but the right and inheritance of the people, and that the privileges which they claim are absolutely necessary to support their own proper authority, and to give the people of the colony that protection against arbitrary power which nothing but a free and independent assembly can give. Their right they found on this presumption, that the Assembly of this island holds the same rank in the system of their constitution as a British House of Commons does in that of the mother-country."†

Mr. Haliburton describes the constitution of the House of Assembly of Nova Scotia in the following

* Vol. i. p. 9. † Vol. i. p. 56.

terms:—"The Assembly resembles the Lower House of Parliament in its formation, mode of procedure, and power within its jurisdiction, as far as the different circumstances of the country permit. The freeholders are assembled, in the several counties and towns entitled to representation, by the king's writ, and their suffrages taken by the sheriff. The members thus elected are required by the governor to meet at Halifax, the capital of the province, at a certain day, when the usual oaths being administered, and a speaker chosen and approved, the session is opened by a speech from the person administering the government, in imitation of that usually delivered from the throne, in which, after adverting to the state of the province, he calls their attention to such local subjects as seem to require their immediate consideration."*

In several of the British colonies the local subordinate government was originally not a tripartite body, but consisted only of the governor and a House of Assembly. In progress of time, however, the executive council of the governor was allowed to acquire a legislative power, at first jointly with the governor, and afterwards separately; and it began to occupy a place in the subordinate government, which was considered analogous to that of the House of Lords in the supreme government.† Mr. Haliburton makes the following remarks on the council of Nova Scotia:—"As an Upper House,

* Account of Nova Scotia, vol. ii. p. 319, 320.

† See Edwards, vol. ii. p. 405—8. Long, vol. i. p. 164. Haliburton's Nova Scotia, vol. ii. p. 314.

their proceedings, though conducted with closed doors, are formal, and in imitation of the usage of the House of Lords; and although they cannot vote by proxy, they may enter the reasons of their dissent on their journals. Dissimilar as this body is in many important particulars to the House of Lords, any nearer approach to the original appears, from the state of the country, to be very difficult."*

The principles which have been just stated were fully recognized and adopted by the British parliament in remodelling the constitution of Canada in 1791. A tripartite legislature was established in both provinces, avowedly in imitation of the tripartite legislature of Great Britain; and the governor was expressly enabled to give his consent to Acts of the legislature, and such consent was final unless the Act was disallowed by the Crown within two years.

Moreover, according to the former practice in several of the English colonies, an Act of the local legislature was in force as soon as it received the assent of the governor, without its being remitted to England for the approbation of the crown;† at the present day, a legislative measure which has been passed by a local legislature of a British colony is called an Act (and not a Bill) when it is remitted to England for the assent of the crown.

* See Edwards, vol. ii. p. 405—8. Long, vol. i. p. 164. Haliburton's Nova Scotia, vol. ii. p. 315.

† See Edwards, vol. ii. p. 408. Long's Jamaica, vol. i. pp. 20. 56. 196. Story's Commentaries on the Constitution of the U. S., vol. i. p. 145. 158.

Such having been the course of the dominant country with respect to the matter in question, it was natural that its conduct should diffuse an opinion amongst the inhabitants of its dependencies, that their governments were co-ordinate with its own; it was natural, to use the words of Adam Smith, that the people of the colonies should be fond of calling their assemblies parliaments, and should consider them as equal in authority to the parliament of Great Britain.*

There is a constant tendency, from inevitable causes, to a misconception of the character and powers of a subordinate government. The relation of a subordinate to a supreme government is a complicated relation, which the people both of the dominant country and the dependency are likely to misunderstand, and the incorrect notions entertained by either party are likely to give rise to unfounded expectations and to practical errors in their political conduct. It is the duty of the government of the dominant country to do everything in its power to diffuse correct opinions and to dispel errors respecting its political relations with the dependency, and still more to avoid creating an error on this subject; since, in case of any collision between the dominant country and the dependency, which an error on this subject is likely to produce, the weaker party, that is the dependency, can scarcely fail to be the chief sufferer. Unless the dominant country should be prepared to concede

* See above, p. 297.

virtual independence, it ought carefully to avoid encouraging the people of the dependency to advance pretensions which nothing short of independence can satisfy. If a dominant country grants to a dependency popular institutions, and professes to allow it to exercise self-government, without being prepared to treat it as virtually independent, the dominant country by such conduct only mocks its dependency with the semblance of political institutions without their reality. It is no genuine concession to grant to a dependency the names and forms and machinery of popular institutions, unless the dominant country will permit those institutions to bear the meaning which they possess in an independent community; nor do such apparent concessions produce any benefit to the dependency, but, on the contrary, they sow the seeds of political dissensions, and perhaps of insurrections and wars, which would not otherwise arise.

2. The dominant country ought not to neglect the dependency.

In the next place, a dominant country ought not, by neglecting a dependency, to allow it to form habits of practical independence, unless it be prepared to follow this system to its legitimate consequences, and to recognize formally the independent government which has grown up though its sufferance.

If a dependent colony be neglected during its youth by the dominant mother-country, it enjoys the advantages of practical independence which that neglect implies, and being weak and small it is not tempted to assert its independence: it feels the need of protection by the mother-country, and does not

as yet think of entire separation from it. When it has grown older and stronger, its wealth naturally suggests to the mother-country the policy of requiring it to contribute to the expenses of the general government. But if it has been neglected up to that time by the mother-country, it will probably proceed to assert its independence, and the mother-country must either resort to coercive measures or yield to its pretensions. The history of the Anglo-American colonies makes it probable that a mother-country will neglect a colony while it is weak and needs assistance, and will attempt to tax it when it has become strong and is likely to resist.

The neglect of a dependency by the dominant country is a snare and a deceit to the people of the former; it lures them on to their destruction, unless the dominant country should be prepared to grant them the independence which they will infallibly seek to obtain.

3. The dominant country ought to legislate for the dependency, whenever such legislation would be be useful.

For the purpose of preventing such neglect, and the mischievous consequences which it entails, the dominant country ought to legislate for the dependency, whenever such legislation would be useful to the latter.

It will appear from preceding parts of this Essay, that the occasions upon which the supreme government can legislate directly for a dependency to the advantage of the latter, are not numerous. There are, however, cases in which such legislation is expedient. In every such case the supreme go-

vernment ought to legislate for the dependency, not merely on account of the utility resulting from the particular act of legislation, but also in order to remind the dependency of its dependence, and to avoid the neglect of the dependency with the mischievous consequences which that neglect involves.

But, for the purpose of accomplishing this object, all formal obstacles in the dominant country to such legislation ought, as far as possible, to be removed.

It often happens that the supreme government, owing to its form being popular, or to the multiplicity of the demands upon its attention, is unable to legislate directly for a dependency, except upon extraordinary occasions. In this state of things it is expedient that the legislation for the dependency which proceeds from the dominant country should be conducted by some subordinate authority in it. But the subordinate authority best fitted for this purpose is that part of the subordinate government of the dependency which is placed in the dominant country. The legislation by such a subordinate authority and the legislation of the supreme government itself would, it is manifest, equally emanate from authorities representing the opinions and interests of the dominant country.

In applying this remark to the English dependencies, we find that the crown, which forms that part of the subordinate government of a dependency which is placed in the dominant country, can legislate (by orders in council or by instructions through the secretary of state) for a crown colony; but that

the crown cannot legislate for a dependency in which the local government is partly composed of a house of assembly or other body coordinate with itself.

The rule which prevents the English crown from legislating for a dependency in which the form of the local subordinate government is popular does not lead to inconvenient consequences, provided that the dependency be allowed to manage its own internal affairs and to enjoy a virtual independence. But the application of this rule to dependencies to which England does not intend to allow a virtual independence is inconvenient, since it is impossible for parliament to legislate frequently for a single dependency; and therefore, when a necessity arises for the legislative interposition of the dominant country, it is likely that the interposition will come at too late a period, or will be made otherwise under unfavourable circumstances. Accordingly, in a dependency belonging to the latter class, it seems expedient that the house of assembly should be considered mainly as a check upon the legislative powers of the governor and his council; and that the crown should possess a power of legislating for such a dependency in the same manner as it legislates for a crown colony.

The following reasons may be alleged in support of this conclusion:—

If England is to legislate at all respecting the internal affairs of any of its dependencies, the possession of this power by the crown would, in general, enable it to legislate under the most favourable cir-

cumstances. Since the crown would act upon the advice of the department peculiarly charged with the affairs of the dependency to which the law would relate, its interposition would probably be made at a sufficiently early time to prevent the various evils arising from delay. The persons so advising the crown would be exempt from local interests and passions, and would probably not be influenced materially by any political party in the dependency. They would, moreover, be directly responsible to parliament for the advice so given by them, and their responsibility might be increased if every order in council, or other legislative act issued by the crown to a dependency, were presented to parliament, together with a written statement of the purpose and grounds of the measure.

The concession of a power of this kind to the crown would not diminish the legislative power of parliament over the dependencies. The crown would act by powers expressly delegated to it by parliament. Now when a supreme legislature delegates a power of subordinate legislation respecting a certain subject, it does not diminish its own power of legislating respecting that subject. An order in council affecting a dependency might be repealed or modified by parliament as soon as it was issued; and no provision of an order in council would be valid which was inconsistent with an act of parliament.

It may be objected to legislation for a dependency by orders in council that they are advised by persons who are not the chosen representatives of the people

of the dependency, and over whom the latter exercise no direct influence. But this objection equally applies to legislation for a dependency by parliament, since the people of a dependency are not directly represented in parliament, and it, in fact, involves a claim inconsistent with a state of dependence.

It may be remarked that the Secretary of State for the Colonial Department and his official assistants know more about the condition and interests of the British dependencies, than Parliament or the public, inasmuch as their attention is more exclusively directed to the subject. It is likewise probable that they will care more for the interests of the dependencies committed to their charge, on account of their being under a responsibility to public opinion, by which Parliament is not affected in an equal degree, and from which the public at large is nearly exempt.

The preceding remarks have been intended to show, that a dependency which is likely to remain virtually dependent for a considerable time ought not to be placed under popular institutions of such a character as will probably tempt the people to aim at practical independence; that a popularly elected body and other popular institutions are expedient as a check and an assistance to the governor and his council or other local executive authorities; but that facilities should be given to the home authorities to legislate for the dependency without a recurrence to the authority of the supreme

government. These ends may be best attained, with respect to an English dependency having popular securities against misgovernment, by requiring the consent of a popularly-elected body in a dependency to every act of the local subordinate government, by establishing in it a liberty of the press and popular municipal bodies, and, at the same time, by granting to the crown a power of legislating for the dependency without the concurrence of the local popular body.

Plan of a consultative council in a dependency, or a council representing the people of the dependency, but not possessing any legislative or executive powers.

Before we conclude the series of remarks upon the means of reconciling popular institutions in a dependency with its virtual dependence, we will advert to a plan which might be tried for giving to a dependency many of the advantages resulting from popular institutions, without exposing it or the dominant country to their countervailing disadvantages.

This plan consists in subjecting the governor (or other head of the local subordinate government) to the control of a council representing the opinions and feelings of the more intelligent portion of the people, but not possessing any legislative or administrative powers strictly so called. The governor would be bound to consult this council upon every legislative measure; but neither he nor the home department of the subordinate government would be concluded by its opinion. It would have the powers of petitioning the governor to introduce any law, and of dissenting from any law proposed by him, or of suggesting amendments in it; but the

governor would be at liberty to refuse the request or reject the advice. In case, however, he decided against such request or advice, he would be bound to report to the home authorities the grounds of his decision.

The establishment of such a council as we have just stated would possess the following advantages. By concentrating the opinion of the intelligent and proprietary classes of the dependency upon its government, it would increase the influence of the most enlightened public opinion in the dependency upon the acts of its immediate rulers; and also (though in a less degree) upon those of the home authorities and even of the supreme government. It would likewise provide an authentic organ through which the local government and the home authorities could easily learn that opinion. Without such a council the home authorities have no means of learning authentically the opinions and feelings of the more intelligent part of the people, in a dependency whose local government is not controlled by a representative body. Accordingly, when a complaint upon any political matter is made by any of the inhabitants of such a dependency, the home authorities run the risk of falling into serious error, from their necessary ignorance of the characters and purposes of the complainants. If they entertain the complaint, they may do an injustice to the local government, and may even lower its credit and weaken its authority; if they do not entertain the complaint, they may refuse redress of a real grievance, and create

an opinion that the authorities in the dominant country are deaf to the prayers of the dependency.

Such a council, as representing the more intelligent classes of the dependency, and as destitute of legislative and executive powers, would probably conduct itself, in general, with discretion and forbearance. Instead, like a representative body possessing legislative powers, of prepossessing the dominant country against the dependency by a disingenuous and indiscriminating opposition to the measures of the local government, it would rather, by the general moderation of its proceedings, create a favourable disposition towards the dependency in the government and public of the dominant country, upon which (especially if it be condemned by its weakness to dependence) it must ultimately and permanently rely for obtaining a good administration of its political concerns. But although such a council would possess no proper legislative or executive powers, and would therefore be unable to arrest the machine of government, it would, by giving the people of the dependency an authentic legal organ of their political opinions and wishes, and affording them a considerable security against the misrule of the local and even of the home authorities, tend to conciliate their affections towards the government, and to mitigate the discontent which they would naturally feel if they were excluded from taking any part, or having any voice, in the management of their own political affairs.

It may be objected to the plan just described,

that such a council, though nominally destitute of legislative powers, would, in a short time, come to possess them practically; since the governor and the home authorities would be afraid or unwilling to act in opposition to its opinion, and would therefore treat it as if it were virtually a co-ordinate authority and not a merely consultative body. But such a council could only acquire a legislative power by the sufferance of the governor and the home authorities, inasmuch as the subordinate government could legislate without its consent; and the known inconveniences of a representative body in a dependency possessing a legislative power would afford a strong inducement to the members of the subordinate government to assert constantly, and occasionally to exercise, their exclusive power. It may likewise be objected to the plan, that such a council would afford a centre in which the discontent of the dependency might be collected, and round which it could organize itself. To this objection it may be answered that, supposing the people of the dependency to be discontented with their government, their discontent will find a more dangerous vent in voluntary and probably illegal associations, if it has no legitimate and constitutional organ. It may be added, that if the people of the dependency are generally dissatisfied with their government, and if they are likely to resist its authority by force with any reasonable prospect of success, the dependency can scarcely be considered as belonging to those which the dominant country ought to retain in a state of virtual dependence.

CHAPTER XI.

How a Dependency may cease to exist as such, or may lose its distinctive character.

I HAVE attempted in the first five chapters to explain the nature of a dependency; and I have endeavoured in the following chapters to state the advantages and disadvantages which arise to the dominant country and the dependency from the relation of supremacy and dependence by which they are connected. I shall consider, in conclusion, how a dependency may cease to exist as such; or how it may lose the character by which it is distinguished from an independent state, and from a dependent community directly subject to the supreme government.

Modes by which a dependency may lose its distinctive character.

There are two modes in which a dependency may lose its distinctive character: first, it may become directly subject to the supreme government of the country on which it is dependent (or to the supreme government of some other independent country); and, secondly, it may become an independent state. As a dependency is a territory governed by an immediate government of a peculiar class or description, an essential alteration in a dependency, considered as such, supposes that its immediate government is destroyed or essentially altered. Consequently, if the immediate government sur-

vives, on either of the two events which we have just supposed it undergoes an essential change. On the first of those events it remains subordinate, but loses its complete organization: on the second, it retains its complete organization, but becomes supreme.

1. It may become directly subject to the supreme government.

A dependency cannot lose its distinctive character in the first of these modes, unless the dependent territory be so near the dominant country that the latter may rule it without the interposition of a subordinate government.* When a dependency is so situated, the supreme government may incorporate the dependency with the parts of its dominions which it governs directly. For example, in consequence of the concession made by the Romans in the Social war, the Italian communities were converted from dependencies into integral portions of the territory directly subject to the sovereign government of the Roman republic. Their citizens were no longer limited to the right of voting in a subordinate local assembly, but obtained a vote in the supreme assembly of the citizens at Rome.† The Union of Ireland with Great Britain in 1800 may be considered as an example of the same change; inasmuch as Ireland continued to be dependent in fact until the Union,‡ though it had become nominally and legally independent from the year 1782. Since the Union, although the practice of sending a viceroy to Ireland has been retained,

* Above, chap. iv.

† Above, p. 130. See the passage of Wachsmuth cited in p. 106.

‡ See Note (L.)

the Irish government has lost its former completeness and separateness, and the country is no longer a dependency. So, if it were deemed expedient, Guernsey and Jersey, with the other Channel islands, and the Isle of Man, might be deprived of their character of dependencies, and be governed directly by the English government, like the other small islands adjacent to Great Britain.

2. It may become an independent state.

Adverting to the second mode in which a dependency may lose its distinctive character, we will consider the various ways in which it may become an independent state.

By a revolt of the subordinate government or the people.

1. A dependency may become an independent state by a successful revolt of the local subordinate government from the supreme government; or by a successful revolt of the people of the dependency from both governments.

In the first case, the revolt may amount to little more than a refusal of the local subordinate government to obey the commands of the supreme government; the relations of the people of the dependency to the former government remaining unchanged. It has been remarked, in previous parts of this essay, that the nature of a subordinate government, and the ordinary temper of the inhabitants of a dependency, afford considerable facilities for the success of such a revolt; and that the dependencies of half civilized countries have often become independent in this manner.* It may be remarked, moreover, that the revolt of the English colonies in North

* Above, pp. 188. 277.

America was substantially a revolt of the local governments; for the political institutions of every colony were so popular, that the defection of the mass of its inhabitants implied the defection of the body in whose hands the local government was placed. Accordingly, the relations of the insurgent colonists to their local governments were not substantially changed by the success of the insurrection; the political institutions which the colonies severally possessed, while they were dependent upon England, being the basis of the several states' governments which they established after they had made themselves independent.

Of a successful revolt of the people of a dependency from the local and supreme governments, the revolt of the Spanish colonies in South America is an example; for, in none of those colonies was the local government in the hands of the colonists, or of any considerable portion of them.

The complete organization of its immediate government gives to a dependency a great facility for establishing its independence by a revolt. In that event the structure of the subordinate government, and even the persons of whom it is composed, may remain unchanged; and the people may yield to it, as a supreme government, the obedience which they paid to it in its subordinate character. But a country immediately subject to a supreme government has no such facility for bringing about a revolution. It has no subordinate government completely organized; and on revolting from its supreme govern-

ment, it must frame a new government to meet the exigencies of the occasion. Thus, if the local government of Egypt established its independence, it probably would undergo no further change than the severance of the slight connexion which binds it to the government of the Porte. But when Belgium, which was an integral part of the kingdom of the Netherlands, separated itself from Holland, it was compelled to create a new government; a work which it accomplished by establishing a constitution formed of a king and two legislative chambers, and by placing a prince of a foreign family on the newly erected throne.

Where the people of a dependency, who have been excluded from all share in the subordinate government, revolt from their subordinate as well as their supreme rulers, their political institutions may be so nearly dissolved that the creation of a new government may become necessary. Such was the origin of the recently created kingdom of Greece, which was not founded upon the Turkish provincial government, but was formed out of new elements.

The revolt of the Maltese from the French government, in 1798, affords a parallel to the case to which we have just adverted. The government of Malta resided in the Order of St. John when the island was taken from them by the French; but, on the expulsion of the order, the island became a part of the French dominions and was governed as a dependency of France. As the government of the order was dissolved on their expulsion, the govern-

ment which the French established in its place was the only government in the island at the time of the revolt. Consequently, the Maltese insurgents who shut up the French in Valletta, and occupied the open country, were compelled to create a government formed of the leaders of the insurrection; and this government, hastily and rudely run up to meet a pressing exigency, administered the part of the island not in the possession of the French, till the French in Valletta surrendered the place to the English.

The difficulty of forming, at the moment of the transition, new political institutions suited to the circumstances of the community, naturally determines a dependency which passes from dependence to independence, to retain its subordinate government without any other changes than those which the transition renders inevitable. The difficulty is clearly shown by the nature of the common government, which, at the close of the war of independence, the revolted English colonies in North America substituted for the common authority of the mother-country. At the close of the war, every colony was virtually an independent state, since it possessed a government of its own, which, though formerly subordinate, had become substantially sovereign. The several colonies, therefore, were bound together by no other tie than the loose confederacy which they had hastily formed for the limited purpose of conducting the war against England. Through the influence of Washington

and other leading statesmen, this confederacy of independent states was converted into a federal state; the several states retaining their several governments, but submitting to a common government invested with specified powers. The limited extent of the powers given to the common government, and the indefinite extent of the powers reserved by the several governments, are certainly important defects in the political system of the United States; threatening to bring about a disruption or dissolution of their union, and involving the federal state, which arises from their union, in wars or disputes with other independent communities. But the prejudices and interests, which, in each of the revolted colonies, supported the powers of its peculiar government, would have opposed invincible obstacles to a perfect fusion of those colonies into one independent state; and, instead of wondering that such a fusion was not accomplished by Washington and his coadjutors, we should rather admire the genius and wisdom which enabled them to approach so closely to that unattainable object.*

2. A dependency may become an independent state, in consequence of the dominant country voluntarily relinquishing its supremacy.

By the voluntary cession of the authority of the dominant country.

Adam Smith is of opinion that no dominant

* It may be remarked, as an example of the tendency of dependent communities which become independent to retain the political institutions which they possessed in their state of dependence, that the chief officer of each of the American State Governments still continues to bear the title of *governor;* although this title is in general conferred exclusively on the head of a local government in a dependency.

country will ever voluntarily relinquish its power over a dependency. "To propose," he says, "that Great Britain should voluntarily give up all authority over her colonies, and leave them to elect their own magistrates, to enact their own laws, and to make peace and war, as they might think proper, would be to propose such a measure as never was, and never will be, adopted by any nation in the world. No nation ever voluntarily gave up the dominion of any province, how troublesome soever it might be to govern it, and how small soever the revenue which it afforded might be in proportion to the expense which it occasioned. Such sacrifices, though they might frequently be agreeable to the interest, are always mortifying to the pride of every nation; and, what is perhaps of still greater consequence, they are always contrary to the private interest of the governing part of it, who would thereby be deprived of the disposal of many places of trust and profit, of many opportunities of acquiring wealth and distinction, which the possession of the most turbulent, and, to the great body of the people, the most unprofitable province seldom fails to afford. The most visionary enthusiasts would scarce be capable of proposing such a measure, with any serious hopes at least of its ever being adopted." *

It is true that there has not been hitherto any instance of a dependency becoming independent by the voluntary act of the dominant country. The

* Wealth of Nations, b. 4. ch. 7. Part III. (vol. ii. p. 443.)

Greek colonies form no exception to Adam Smith's remark, since they were independent from their first establishment; and, therefore, the mother-country possessed no power over them, which it could subsequently relinquish. The most remarkable changes from dependence to independence have been produced by insurrection against the dominant country; and the dominant country has not consented to recognize the independence of the formerly dependent communities, until it had exhausted all its means of reducing them to obedience. Examples are furnished by the Swiss Confederacy, the United Provinces of the Netherlands, the United States of America, and the various independent states which have been formed out of the revolted Spanish and Portuguese colonies in North and South America.

It is, however, conceivable that, in a given case, the dominant country might perceive that it derives no benefit from the possession of a dependency, and that the dependency is able and willing to form an independent state; and that, consequently, a dominant country might abandon its authority over a dependency for want of a sufficient inducement to retain it. A dominant country might, for example, see that the dependency contributes nothing to its military defence, or to the expenses of the supreme government; that it adds nothing, as a dependency, to the productive resources or commercial facilities of the dominant country; that it is a constant source of expense to the supreme government, is likely to engender many economical evils, and may even

involve the dominant country in war on its account. It might, moreover, perceive that the dependency is sufficiently populous and wealthy to form an independent state, and that the people of the dependency desire independence.

If a dominant country understood the true nature of the advantages arising from the relation of supremacy and dependence to the related communities, it would voluntarily recognize the legal independence of such of its own dependencies as were fit for independence; it would, by its political arrangements, study to prepare for independence those which were still unable to stand alone; and it would seek to promote colonization for the purpose of extending its trade rather than its empire, and without attempting to maintain the dependence of its colonies beyond the time when they need its protection.

The practical difficulties and inconveniences inherent in the government of dependencies, which have been stated in preceding chapters, are necessary or natural consequences of the relation of supremacy and dependence, and of the imperfect though necessary expedient of a subordinate government. Now if a dependency is considered as in training for ultimate independence, the difficulties naturally incident to its government, if they do not vanish, are nevertheless greatly reduced. If a dependency were so considered, the free and forcible action of its local institutions would be encouraged as an unmixed good, not discouraged as a source of strife

with the dominant country, and of vain resistance to its power; and all precautions on the part of the supreme government for the purpose of preventing the people of the dependency from regarding their subordinate government as virtually supreme, would be needless. If a dependency be distant, if its territory be large, and its population numerous; and if the powers of its local subordinate government reside, to a considerable extent, in a body chosen by the inhabitants; it is difficult for the dominant country to prevent it from forming habits and opinions which are scarcely consistent with its virtual dependence. But if such a dependency be regarded as in training for independence, the local popular institutions leading to, and implying, self-government, may be allowed to have free play, and the interferences of the dominant country with the political affairs of the country may cease almost insensibly.

Admitting the impossibility of the prevailing opinions concerning the advantages of extensive empire being so far modified as to permit a dominant country to take such a view of its political relations with its dependencies as that now indicated, it is proved by the example of England that the dominant country may concede virtual independence to a dependency, by establishing in it a system of popular self-government, and by abstaining almost constantly from any interference with its internal affairs.

Such a relation of the dominant country and the

dependency as has been described in the preceding paragraph seems, however, scarcely consistent with the duration of the dependence of the latter for any considerable period. At all events the long duration of its dependence under such circumstances implies as much moderation and rationality on both sides as would be implied on the side of the dominant country by a voluntary cession of its authority over the dependency.

It is obvious to remark, that the dominant country ought not to abandon its authority over a dependency, unless the people of the dependency consent to the cession, and are capable of forming an independent community. It is bound morally, not to throw off a helpless dependency, although the possession of it should promise no advantage to itself.

Mode in which a district immediately subject to a supreme government becomes a dependency or an independent state.

We will close the present chapter with some remarks on a case not falling strictly under the above heads, but related by a close analogy to the subject under consideration.

It may happen that the inhabitants of a territory immediately subject to the supreme government desire to form themselves into a separate community, independent or dependent, not by a violent insurrection against that government, but with its consent and by peaceable means. Examples of this state of things are afforded by Scotland during the first half of the last century, by Sicily during the revolution of 1820,* and by Ireland at the present time.

* See Colletta, Storia di Napoli, lib. ix. (tom. iv. p. 148.)

The demand of the advocates of the repeal of the Act of Union between Great Britain and Ireland appears to be, that Ireland should be placed in the same political relation with Great Britain as that which existed immediately before the Union.

Ireland (as we have already seen*) was both legally and in fact a dependency of England or Great Britain until the year 1782. In that year the Parliament of Great Britain surrendered its supremacy over Ireland; but the King of Great Britain continued to be, as such, King of Ireland. The change which took place at this time in the political relations of Great Britain and Ireland was, therefore, of the following nature. Before the year 1782, the King of Great Britain was, as a constituent part of the Parliament of Great Britain, a member of the sovereign government of Ireland. Before the same year the King of Great Britain was, as such, likewise King of Ireland; and, as King of Ireland, he was a constituent part, together with the Irish houses of parliament, of the subordinate government of Ireland. Before this year, therefore, the political relations between Great Britain and Ireland closely resembled those between Great Britain and a British dependency whose subordinate government consists of the Crown, with a legislative council appointed by the Crown and a house of assembly elected by the inhabitants; with this difference, however, that a dependency of this sort is not considered a separate kingdom, annexed

* Above, p. 92. 154, and see note (L.)

to the British Crown. But after the year 1782, the body which was sovereign in Great Britain ceased to be sovereign in Ireland; the sovereign government of Ireland consisted of the Crown, with the Irish houses of parliament; and the only political connexion between the two countries was, that the King of Great Britain was also King of Ireland, the rules of succession to the two crowns being, moreover, so long as they both might remain unaltered, identical. The political relation between Great Britain and Ireland during the eighteen years following 1782 was similar to the political relation between Hanover and the United Kingdom during the reign of William IV.; with this exception, that the rules of succession to the two crowns were identical in the case of Great Britain and Ireland, and not identical in the case of the United Kingdom and Hanover.

But although Ireland ceased in 1782 to be legally and in form, it did not then cease to be, virtually and in fact, dependent upon Great Britain. The great body of the Irish people continued to be excluded from all effective participation in the exercise of political rights; the country was managed by a native party devoted to the English interest and to the maintenance of the connexion with England; and, consequently, the government was substantially, though covertly, directed by English influence. Although the form of the Irish government was completely altered in regard to its relation with England, by the events of 1782, the extent of

the indirect influence of England over it had not, before the Union, been materially affected by that change.

Now it may be assumed that the advocates of a repeal of the Act of Union between Great Britain and Ireland do not wish to place Ireland in the same legal relation to Great Britain as that in which it stood prior to 1782, and to make it a dependency of Great Britain. Their desire doubtless is, that the legal relation of Great Britain and Ireland should be restored to the state in which it was at the time of the Union.

But although the legal relation which subsisted between Great Britain and Ireland at the time of the Union might be restored, the general political relations subsisting between the two countries would necessarily be very different. The internal changes which have taken place in Ireland since 1800 have rendered it impossible that the bulk of the people should be excluded from the effective exercise of all political rights, and that the country should be governed by a merely English party. The Irish House of Commons would, if the Act of Union were repealed, be elected by constituencies not less popular than those by which the Irish members of the House of Commons of the United Kingdom are elected. An Irish House of Commons, so elected, could not fail to obtain the chief influence in the government of the country, and would, therefore, render Ireland, for some time at least, both legally and virtually an independent state. The power of

the Crown would, under these circumstances, be insufficient to render Ireland virtually dependent on Great Britain, or even to procure to Great Britain any sensible influence upon the proceedings of the Irish Parliament.

The natural relations of Ireland to Great Britain would, however, eventually secure to the government of the latter a considerable influence over that of the former island. The close proximity of their coasts, the identity of their languages, their close commercial relations, the ownership of land in Ireland by Englishmen, together with the superior wealth, power, and general importance of Great Britain, must ultimately lead to this result. The inconveniences which Ireland would suffer from becoming an independent state (such as the increased taxation necessary for maintaining a separate army and navy, and a separate body of representatives with foreign powers, and the loss of the free commercial intercourse with Great Britain and her dependencies) would conspire with many other causes to render a large body of the Irish people dissatisfied with their government. It may, therefore, be reasonably doubted whether, if the Act of Union between Great Britain and Ireland were repealed, and the government of Ireland were restored to the state in which it existed immediately before the Union, Ireland would long remain a virtually independent state.*

* It has, I believe, been thought by some persons that in case the act of Union between Great Britain and Ireland were repealed,

a federal relation might conveniently be established between the two countries. It is, however, manifest that in order to establish a federal relation between Great Britain and Ireland, it would be necessary to convert the British parliament into a state legislature, leaving limited functions with respect to Great Britain; to create a similar body having similar functions with respect to Ireland, and also to create a new federal body distinct from the British and the Irish parliaments; a change to which the people of Great Britain would be less likely to assent, than to the independence of Ireland.

NOTES.

NOTE A. (p. 1.)

By the *executive power*, Bentham understands any subordinate power of government; any power which is not the supreme legislative power.

"Ce mot, *pouvoir exécutif*, ne présente qu'une seule idée claire; c'est celle d'un pouvoir subordonné à un autre, qu'on désigne par l'appellation corrélative *pouvoir législatif*."—Traités de Législation, tom. i. p. 324. (ed. 1802.)

He divides the executive power into twelve branches, some of which are obviously legislative powers. Thus he describes the first of these in the following manner:

"Pouvoir subordonné de législation sur des districts particuliers, sur des classes de citoyens, *même sur tous, lorsqu'il s'agit d'une fonction particulière du gouvernement*."—Ib. p. 321.

The latter words describe the limitation to a class of subjects, which characterizes the delegation of legislative powers, in every case except that of a subordinate government.

Bentham also makes the following remark respecting the ordinary conception of the distinction between legislative and executive powers.

"On est très porté à appeler *pouvoir législatif* celui qu'on voit s'exercer par un corps politique, et *pouvoir exécutif*, celui qu'on voit s'exercer par un seul."—Ib. p. 319.

Mr. Austin, after a detailed investigation of the subject, likewise arrives at the conclusion that the distinction between legislative and executive powers of government cannot be supported. The result of his investigation is contained in the following passage:

"Of all the larger divisions of political powers, the division of those powers into *supreme and subordinate* is perhaps the only precise one. The former are the political powers, infinite in number and kind, which partly brought into exercise, and partly lying dormant, belong to the sovereign or state: that is to say, to the monarch properly so called, if the government be a government of one: and, if the government be a government of a number, to the sovereign body considered collectively, or to its various members considered as component parts of it. The latter are those portions of the supreme powers which are delegated to political subordinates: such political subordinates being subordinate or subject merely, or also immediate partakers in those very supreme powers of portions or shares wherein they are possessed as ministers and trustees."—Province of Jurisprudence Determined, p. 248, 9.

The inquiry in the text will explain my reasons for not adopting this conclusion, and for thinking that the legislative and executive powers of a sovereign government may be precisely distinguished, although different portions of these powers are often or always vested in the same political body or functionary.

NOTE B. (p. 26.)

The weakness of the laws, and their liability to be set aside in practice, are often complained of by the Athenians. Thus in two verses of Plato the comic poet:

> ἴσασιν ἡμῶν οἱ νόμοι τούτοισι τοῖσι λιπτοῖς
> ἀραχνίοις, ἂν τοῖσι τοίχοις ἡ φάλαγξ ὑφαίνει.
> (Meineke, fragm. Poet. Com. Ant. Pars II. p. 620.)

The same thought is attributed to Zaleucus, Solon, and others: see Meineke ad loc.

So Aristotle was accustomed to say, that the Athenians had invented bread-corn and laws; but that they used the former, and not the latter. πολλάκις δὲ καὶ ἀποτιτυόμενος τοὺς Ἀθηναίους ἔφασκεν εὑρηκέναι πυροὺς καὶ νόμους, ἀλλὰ πυροῖς μὲν χρῆσθαι νόμους δὲ μή.—Diog. Laert. v. 17.

The possession of written laws, and the enforcement of them against the *arbitrium* of the magistrates, were, however, considered peculiarly characteristic of a democracy. Thus the Athenian law in Andocides de Myst. § 85. ed. Bekker, says: ἀγεάφῳ δὲ νόμῳ τὰς ἀρχὰς μὴ χρῆσθαι μηδὲ περὶ ἑνός. Compare the law of Solon, ψήφισμα δὲ μηδὲν, μήτε βουλῆς μήτε δήμου, νόμου κυριώτερον εἶναι, Demosth. adv. Aristocrat. p. 649. ed. Reiske. Æschines adv. Ctesiph. § 6. ed. Bekker, distinctly opposes the legality of democratic to the arbitrariness of despotic and oligarchical governments. εὖ γὰρ ἴστε, ὦ ἄνδρες Ἀθηναῖοι, ὅτι τρεῖς εἰσὶ πολιτεῖαι παρὰ πᾶσιν ἀνθρώποις, τυραννὶς καὶ ὀλιγαρχία καὶ δημοκρατία, διοικοῦνται δ' αἱ μὲν τυραννίδες καὶ ὀλιγαρχίαι τοῖς τρόποις τῶν ἱδιωτικότων, αἱ δὲ πόλεις αἱ δημοκρατούμεναι τοῖς νόμοις τοῖς κειμένοις. Euripides, likewise, contrasts despotic and democratic governments in the same manner:

> οὐδὲν τυράννου δυσμενιστέρον πόλει,
> ὅπου τὸ μὲν πρῶτιστον οὐκ εἰσὶν νόμοι
> κοινοί, κρατεῖ δ' εἷς τὸν νόμον κεκτημένος
> αὐτὸς παρ' αὑτῷ, καὶ τόδ' οὐκέτ' ἴσον.
> γεγραμμένων δὲ τῶν νόμων ὁ τ' ἀσθενὴς
> ὁ πλούσιός τε τὴν δίκην ἴσην ἔχει.
>
> Suppl. 429—34.

Compare the words of Theseus to Œdipus, in Soph. Œd. Col. 913.

> ὅστις δίκαι' ἀσκοῦσαν εἰσιλθὼν πόλιν
> κἄνευ νόμου κραίνουσαν οὐδέν.

Other passages are collected in Hermann's Greek Antiquities, § 54, note 3, who cites a remark from a treatise by Weisse: "Græci leges scriptas semper habuerunt pro palladio democratiæ."

On the other hand, the oligarchic Sparta had no written laws. One of the three rhetras or oracular decrees said to have been promulgated by Lycurgus, contained a prohibition of written laws: μία τῶν ῥητρῶν ἦν μὴ χρῆσθαι νόμοις ἐγγράφοις, Plutarch, Lycurg. c. 13. Compare Müller's Dorians, b. i. ch. 7. § 4. Aristotle, moreover, in speaking of the judicial powers of the ephors in the Spartan

constitution, says that it would be better if they decided according to written laws, and not arbitrarily: *δίκαιε οὐκ αὐτογνώμονας βέλτιον κρίνειν, ἀλλὰ κατὰ τὰ γράμματα καὶ τοὺς νόμους*, Polit. II. 9. (As to the use of the word *αὐτογνώμων* for *arbitrary*, compare the expressions of Aristotle in another passage of the Politics respecting the distinction between the government of a *βασιλεὺς* and that of a *τύραννος*: *ἅπασαν δὲ διὰ μὲν τὸ κατὰ νόμον βασιλικαὶ καὶ διὰ τὸ μοναρχεῖν ἑκόντων, τυραννικαὶ δὲ διὰ τὸ δεσποτικῶς ἄρχειν κατὰ τὴν αὑτῶν γνώμην*, iv. 10.) See also Müller's remarks in his Dorians, b. iii. ch. 6. § 2. respecting the arbitrary powers of the Spartan Gerontes, which he conceives to have been exercised according to certain unwritten rules of conduct, handed down by tradition; and he refers to Plato's explanation of *ἄγραφα νόμιμα* in his Treatise on Laws, lib. vii. p. 793. But the *ἄγραφα νόμιμα* of Plato and the other Greeks were not equivalent to "unwritten law" in the judicial sense (*i. e.* rules of law adopted by the courts, and not issued in a written form by the supreme legislature); they were merely moral or political maxims, without any compulsive sanction; and therefore they could not have served the purposes of positive law to any considerable extent. See the Penny Cyclopædia, article Law, § 3.

NOTE C. (p. 29.)

In the first of the passages cited in the note, Locke evidently means to say that a government is *morally bound* to govern according to laws, and not that it has not a *legal power* to govern arbitrarily. But as similar expressions are sometimes employed in contexts where the meaning is not so obvious as in the passage just cited, and where they may lead to dangerous consequences, I will adduce some remarks of Bentham upon this confusion. The *Déclaration des Droits*, made by the Constituent Assembly, contained, in its first article, an announcement that "les distinctions sociales *ne peuvent* être fondées que sur l'utilité commune." On these words Bentham comments as follows:

"Mais qu'entend-on par ces mots, *ne peuvent pas*? Veut-on dire que ces distinctions ne sont point établies—ou qu'elles ne doivent pas l'être—ou que si elles existent sans être fondées sur l'utilité commune, il faut les regarder comme nulles et non avenues? On peut choisir, car ces mots ont ces trois significations parfaitement distinctes Si l'on veut dire que ces distinctions *n'existent pas*, c'est un appel aux faits et à l'observation: si l'on veut dire qu'elles *ne doivent pas exister*, c'est un appel au jugement des individus sur une matière de fait. Mais si l'on veut dire qu'elles *ne peuvent pas exister* parce qu'elles sont nulles en elles-mêmes, c'est un attentat contre la liberté d'opinion, c'est une invitation à se soulever contre les lois.

"Dans le premier sens, la proposition n'est pas dangereuse, mais elle est évidemment fausse. Dans le second sens, elle est fondée en raison, mais il falloit l'exprimer clairement, et non employer un terme passionné. Dans le troisième sens, elle contient une doctrine séditieuse. Dire que la loi *ne peut pas*, au lieu de dire que le loi *ne doit pas*, c'est préparer l'insurrection et la justifier d'avance. Je ne saurois comparer ces expressions qu'à ces instruments qui ne présentent rien d'offensif aux yeux, mais dans lesquels on cache un poignard."—Tactique des Assemblées Législatives, tom. ii. p. 292, 3.

NOTE D. (p. 33.)

The following instances of the expressions referred to in the text occur in the ancient authors.

In Herod. VII. 104, Demaratus says to Xerxes of the Lacedæmonians: ἐλεύθεροι γὰρ ἐόντες οὐ πάντα ἐλεύθεροί εἰσι· ἔστι γάρ σφι δεσπότης νόμος, τὸν ὑποδιμαίνουσι πολλῷ ἔτι μᾶλλον ἢ οἱ σοὶ σέ. In Plato Leg. III. p. 700. A. the Athenian says: οὐκ ἦν ἡμῖν ἐπὶ τῶν παλαιῶν νόμων ὁ δῆμος τινῶν κύριος, ἀλλὰ τρόπον τινὰ ἑκὼν ἐδούλευε τοῖς νόμοις. Ibid. 715 D. ἐν ᾗ μὲν γὰρ ἂν [πόλει] ἀρχόμενος ᾖ καὶ ἄκυρος νόμος, φθορὰν ὁρῶ τῇ τοιαύτῃ ἐτοίμην οὖσαν· ἐν ᾗ δὲ ἂν δεσπότης τῶν ἀρχόντων, οἱ δὲ ἄρχοντες δοῦλοι τοῦ νόμου, σωτηρίαν. Plato Leg. VI. 762. E. δεῖ δὴ πάντ' ἄνδρα διανοεῖσθαι περὶ ἁπάντων ἀνθρώπων, ὡς ὁ μὴ δουλεύσας, οὐδ' ἂν δεσπότης γένοιτο ἄξιος ἐπαίνου· καὶ καλλωπίζεσθαι χρὴ τῷ καλῶς δουλεῦσαι μᾶλλον ἢ τῷ καλῶς ἄρξαι· πρῶτον μὲν τοῖς νόμοις (ὡς ταύτην τοῖς ἐτοῖς οὖσαν δουλείαν), ἔπειτα τοῖς πρεσβυτέροις τε καὶ ἐντίμους βιβιακόσι τοὺς νέους. A similar meaning is contained in an axiom ascribed to Zaleucus: ὑπ' ἀνθρώπων μὲν ἥττᾶσθαι τοὺς κειμένους νόμους οὐ καλὸν οὐδὲ συμφέρον· ὑπὸ δὲ νόμου βελτίονος ἡττώμενον παπακρατεῖσθαι καὶ καλὸν καὶ συμφέρον. Stob. Florileg. tit. 44. § 21. (vol. ii. p. 200. ed. Gaisford.) Compare likewise the celebrated expression of Pindar, νόμος ὁ πάντων βασιλεύς, fragm. 48. ed. Dissen, and Cicero de Leg. III. 1. Ut enim magistratibus leges, ita populo præsunt magistratus; vereque dici potest magistratum legem esse loquentem, legem autem mutum magistratum. Also an extract from a work περὶ βασιλείας written in the Doric dialect by Diotogenes the Pythagorean, in Stob. Florileg. tit. 48. § 61. (vol. ii. p. 313.) τὸ μὲν δίκαιον ἐν τῷ νόμῳ ἐντί, ὁ δέ γε νόμος αἴτιος τῷ δικαίῳ· ὁ δὲ βασιλεὺς ἤτοι νόμος ἔμψυχός ἐντι, ἢ νόμιμος ἄρχων· διὰ ταῦτ' οὖν δικαιότατος καὶ νομιμώτατος.

A distinction between the government of men and the government of laws is made in the following passage of Machiavelli. "Le città, e quelle massimamente che non sono bene ordinate, le quali sotto nome di repubblica si amministrano, variano spesso i governi e stati loro, non mediante la libertà e la servitù, come molti credono, ma mediante la servitù e la licenza. Perchè della libertà solamente il nome dai ministri della licenza (che sono i popolani), e da quelli della servitù (che sono i nobili) è celebrato; desiderando qualunque di costoro non essere *nè alle leggi nè agli uomini* sottoposto." Istorie Fiorentine, lib. iv. ad init. Ideas similar to those expressed in the passage of Cicero de Legibus cited above, are contained in the following passage of Mercier de la Rivière's Ordre Naturel des Sociétés Politiques (chap. 13. ad init.)

"Les magistrats dépositaires, gardiens et organes des loix, deviennent, en quelque sorte, des loix vivantes; et par cette raison, la magistrature occupe nécessairement dans la société la place marquée pour les loix, entre la puissance législatrice et tous ceux qui doivent obéir aux loix. Dans tous les temps on l'a regardée comme formant le lien commun qui unit l'Etat gouverné à l'Etat gouvernant, et c'est à juste titre; car ce lien si précieux est l'ouvrage des loix: sans elles il seroit impossible au corps politique de se former. Or tout ce qu'on doit nécessairement attribuer aux loix, on doit également l'attribuer à la magistrature, dont les fonctions sont de faire parler et agir les loix, d'exercer l'autorité des loix, de manifester la volonté des loix, d'en faire l'application, et de leur donner ainsi une existence, une réalité qu'elles ne peuvent obtenir que par le ministère des magistrats qui s'identifient, pour ainsi dire, avec les loix."—Ordre Nat. et Ess. des Soc. Politiques, ch. xiii. (tom. i. p. 146.)

NOTE E. (p. 37.)

Locke's opinions on the separation of the legislative and executive functions are stated in the following passage of his Essay on Civil Government.

"The legislative power is that, which has a right to direct how the force of the commonwealth shall be employed for preserving the community and the members of it. But because those laws which are constantly to be executed, and whose force is always to continue, may be made in a little time, therefore there is no need that the legislative should be always in being, not having always business to do. And because it may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws, to have also in their hands the power to execute them; whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making and execution, to their own private advantage, and thereby come to have a distinct interest from the rest of the community, contrary to the end of society and government: therefore in well ordered commonwealths, where the good of the whole is so considered, as it ought, *the legislative power is put into the hands of divers persons*, who, duly assembled, have by themselves, or jointly with others, a power to make laws; which, when they have done, being separated again, they are themselves subject to the laws they have made; which is a new and near tie upon them, to take care that they make them for the public good.

"But because the laws, that are at once, and in a short time made, have a constant and lasting force, and need a perpetual execution, or an attendance thereunto; therefore it is necessary there should be a power always in being, which should see to the execution of the laws that are made, and remain in force. And thus the legislative and executive power come often to be separated."—Essay on Civil Government, Part II. Sec. 143, 144.

And he afterwards adds, "that in all moderated monarchies and well framed governments, the legislative and executive powers are in distinct hands."—(s. 159.)

Montesquieu, in his Esprit des Lois, adopted Locke's opinions, and expressed them in the following form.

"Lorsque, dans la même personne, ou dans le même corps de magistrature, la puissance législative est réunie à la puissance exécutrice, il n'y a point de liberté, parce qu'on peut craindre que le même monarque, ou le même sénat, ne fasse de lois tyranniques pour les exécuter tyranniquement.

"Il n'y a point encore de liberté, si la puissance de juger n'est pas séparée de la puissance législative et de l'exécutrice. Si elle étoit jointe à la puissance législative, le pouvoir sur la vie et la liberté des citoyens serait législateur. Si elle étoit jointe à la puissance exécutrice, le juge pourroit avoir la force d'un oppresseur.

"Tout seroit perdu, si le même homme, ou le même corps des principaux, ou des nobles, ou du peuple, exerçoient ces trois pouvoirs: celui de faire des lois, celui d'exécuter les résolutions publiques, et celui de juger les crimes ou les différents des particuliers.

"Dans la plupart des royaumes de l'Europe, le gouvernement est modéré, parce que le prince, qui a les deux premiers pouvoirs,

laisse à ses sujets l'exercice du troisième. Chez les Turcs, ou ces trois pouvoirs sont réunis sur la tête du sultan, il règne un affreux despotisme.

"Dans les républiques d'Italie, ou ces trois pouvoirs sont réunis, la liberté se trouve moins que dans nos monarchies. Aussi le gouvernement a-t-il besoin, pour se maintenir, des moyens aussi violents que le gouvernement des Turcs; témoin les inquisiteurs d'état, et le tronc où tout délateur peut, à tous les moments, jeter avec un billet son accusation.

"Voyez quelle peut être la situation d'un citoyen dans ces républiques. Le même corps de magistrature a, comme exécuteur, dès-lors toute la puissance qu'il s'est donnée comme législateur. Il peut ravager l'état par ses volontés générales; et comme il a encore la puissance de juger, il peut détruire chaque citoyen par ses volontés particulières.

"Toute la puissance y est une; et, quoiqu'il n'y ait point de pompe extérieure qui découvre un prince despotique, on le sent à chaque instant.

"Aussi les princes qui ont voulu se rendre despotiques ont-ils toujours commencé par réunir en leur personne toutes les magistratures, et plusieurs rois d'Europe, toutes les grandes charges de leur état." (xi. 6.)

The opinions of Locke and Montesquieu on this subject are adopted, with a few developements, by Sir W. Blackstone, in his Commentaries, vol i. p. 146. 154. 269.

Le Mercier de la Rivière, in his "Ordre Naturel et Essentiel des Sociétés Politiques," after having laid down that the members of a political community ought to be convinced of the justice and necessity of the positive laws by which they are governed, proceeds to say:—

"La première conséquence que nous devons tirer de ces vérités préliminaires, c'est qu'il est socialement impossible que l'autorité législative et la magistrature, ou l'administration de la justice distributive, soient réunies dans la même main, sans détruire parmi les hommes toute certitude de la justice et de la nécessité de leurs loix positives: allons plus loin encore, et disons, sans détruire ces loix elles-mêmes; car elles n'auroient plus ni la forme, ni aucun des caractères essentiels aux loix."—(ch. xii. tom. i. p. 136.)

In a later part of his work, after having attempted to show that every system of legislation by a body of persons is inexpedient and absurd, he adds:—

"A la contradiction évidente et absurde qui règne dans un tel système, ajoutez qu'il tend à anéantir la magistrature et la puissance exécutrice; car dans cette supposition, il n'y auroit de juges souverains, ni d'autorité souveraine, que dans l'assemblée de la nation: ainsi la nation en corps seroit tout à la fois puissance législatrice, puissance exécutrice et corps de magistrature: par ce moyen tout seroit confondu: lorsqu'elle seroit assemblée, elle formeroit une puissance absolument et nécessairement indépendante des loix déjà faites; tout parti qui auroit pour lui le plus grand nombre des opinions ne reconnoîtroit aucune autorité supérieure à la sienne; et dans cet état il n'existeroit qu'une autorité sans loix, qu'un Etat gouvernant sans Etat gouverné; mais dès qu'elle seroit dispersée, il ne resteroit plus après la dissolution de cette puissance arbitraire, que des loix sans autorité, et un Etat gouverné sans

Etat gouvernant: les suites nécessaires d'un tel désordre sont trop sensibles, pour que je puisse me permettre aucune réflexion à leur sujet."—(Ibid. ch. xii. p. 211.)

The following are Paley's remarks on the subject in his "Principles of Moral and Political Philosophy:"—

"The first maxim of a free state is, that the laws be made by one set of men, and administered by another; in other words, that the legislative and judicial characters be kept separate. When these offices are united in the same person or assembly, particular laws are made for particular cases, springing oftentimes from partial motives and directed to private ends: whilst they are kept separate, general laws are made by one body of men without foreseeing whom they may affect; and, when made, must be applied by the other, let them affect whom they will.

"For the sake of illustration, let it be supposed in this country either that, Parliaments being laid aside, the Court of Westminster Hall made their own laws, or that the two Houses of Parliament, with the King at their head, tried and decided causes at their bar. It is evident, in the first place, that the decisions of such a judicature would be so many laws; and in the second place, that, when the parties and the interests to be affected by the law were known, the inclinations of the law-makers would inevitably attach to one side or the other; and that where there were neither any fixed rules to regulate their determinations, nor any superior power to control their proceedings, these inclinations would interfere with the integrity of public justice. The consequence of which must be, that the subjects of such a constitution would live either without any constant laws, that is, without any known pre-established rules of adjudication whatever, or under laws made for particular persons, and partaking of the contradictions and iniquity of the motives to which they owe their origin.

"Which dangers, by the division of the legislative and judicial functions, are in this country effectually provided against. Parliament knows not the individuals upon whom its acts will operate: it has no cases or parties before it, no private designs to serve; consequently its resolutions will be suggested by the consideration of universal effects and tendencies, which always produces impartial and commonly advantageous regulations. When laws are made, courts of justice, whatever be the disposition of the judges, must abide by them; for the legislative being necessarily the supreme power of the state, the judicial and every other power is accountable to that; and it cannot be doubted that the persons who possess the sovereign authority of the government will be tenacious of the laws which they themselves prescribe, and sufficiently jealous of the assumption of dispensing and legislative power by any other."—(Book VI. ch. viii.)

To the remarks in p. 13, 14 (note on the meaning of the word *executive*), I may add, that the term is sometimes limited to the cases in which a law is enforced by the direct application of its sanction. It is in this sense that we speak of the execution of a judgment of a court in a civil action, or of a capital execution.—See also the article *Executions-ordnung*, in Rotteck's and Welcker's Staats-Lexicon. According to this acceptation of the word, a law which receives voluntary obedience is not executed, but only a law

which is neglected or resisted, and is enforced by the proper authorities.

I may likewise mention that, in the language of the English law, certain acts which fall within the meaning of the term *administrative*, as defined in p. 13, are styled *judicial*, because the functionary who performs them exercises a judgment or discretion with respect to their performance. Acts which the functionary is bound to perform, and as to which he has no discretion, are, in the English law, styled *ministerial*.

NOTE F. (p. 88.)

"The government of a *province* may be committed to an assembly of men wherein all resolutions shall depend on the votes of the major part, and then this assembly is a body politic, and their power limited by commission. This word *province* signifies a charge or care of business, which he whose business it is committeth to another man, to be administered for and under him; and, therefore, when in one commonwealth there be divers countries that have their laws distinct one from another, or are far distant in place, the administration of the government being committed to divers persons, those countries where the sovereign is not resident but governs by commission, are called provinces. But of the government of a province by an assembly residing in the province itself there be few examples. The Romans who had the sovereignty of many provinces, yet governed them always by presidents and prætors, and not by assemblies as they governed the city of Rome and territories adjacent. In like manner, when there were colonies sent from England to plant Virginia and Sommer Islands, though the governments of them here were committed to assemblies in London, yet did those assemblies never commit the government under them to any assembly there, but did to each plantation send one governor. For though every man, where he can be present by nature, desires to participate of government, yet where they cannot be present they are by nature also inclined to commit the government of their common interest rather to a monarchical than to a popular form of a government; which is also evident in those men that have great private estates, who, when they are unwilling to take the pains of administering the business that belongs to them, choose rather to trust one servant than an assembly either of their friends or servants."—(Hobbes, Leviathan, Part II. ch. xxii.)

NOTE G. (p. 93)

The theory stated in the text is proposed by Bryan Edwards in his History of the British Colonies in the West Indies. The following are the chief passages in his work in which it is to be found.

"On the whole, subject to the restriction that their trade-laws are not repugnant to those of Great Britain, there are no concerns of a local and provincial nature, to which the authority of the colonial laws does not extend.

"This restriction was intended probably as an auxiliary to other means for preserving the unity of the empire, and maintaining the superintending and controlling power of the mother-country in matters of trade: but it implies also a reciprocal engagement or obligation on the part of the British Parliament not to interpose its authority in matters to which the colonial assemblies are sufficiently competent. With powers so extensive and efficient, these assemblies must necessarily be sovereign and supreme within their own jurisdiction; unobstructed by, and independent of, all control from without; for nothing can be more absurd than to suppose, that a people can be subject to two different legislatures exercising at the same time equal powers, yet not communicating with each other, nor from their situation capable of being privy to each other's proceedings.

"It has, I know, been urged, that the principles I have thus laid down, and the rights which I have allotted to the inhabitants of the British colonies, tend immediately to sovereign and national empire, distinct from, and independent of, the government of the parent state. It will be found, however, that the dependency of the colonies on, and their allegiance to, the crown of Great Britain, and also their proper subordination to the British Parliament, are secured by sufficient ties, regulations, and restraints; *some of which seem at first inconsistent even with the premises I have stated.* Thus, as to the supremacy of the crown: among various other prerogatives, the king reserves to himself not only the nomination of the several governors, the members of the council, and most of the public offices of all descriptions, but he possesses also at the same time, as we have seen, the right of disallowing and rejecting all laws and statutes of the colonial assemblies, even after they had received the assent and approbation of his own lieutenant in the colony. Hence the affirmative voice of the people in their representatives is opposed by three negatives; the first in the council, the second in the governor, and the third in the crown; which possesses likewise the power of punishing the two former branches by dismission, if they presume to act in opposition to the royal pleasure."—Edwards's History of the West Indies, vol. ii. p. 420—430.

The preceding passage is so self-contradictory that it is difficult to infer from it confidently that Edwards intended to assert that the English West India islands were legally independent of the English Parliament. But in the following passage this assertion is distinctly made.

"As the legislative power of Great Britain therefore is supreme only in a relative sense, even within the realm, where the people themselves participate in its authority, much less can it be said to be supreme, in all cases whatsoever, over the colonies. It has indeed been solemnly declared by parliament itself, that parliament has such a power: but if parliament had not the power before, certainly their own declaration could not invest them with it.

"Considering the constituent branches of the British legislature separately, it will be difficult to point out any just authority whatever, existing either in the peers or the representatives of the people, over the colonies. We have seen that the first settlers in most of the British plantations were a part of the English people, in every respect equal to them, and possessed of every right and

privilege at the time of their emigration, which the people of England were possessed of, and irrefragably of that great right of consenting to all laws by which they were to be governed. The people of England therefore, or their representatives, having no rights, powers, or privileges to bestow on the emigrants, which the latter were not already possessed of equally with themselves, had no claim to their allegiance, or any pretence to exercise authority over them.

"As to the English peers, they are possessed of very eminent privileges; from none of which however can they communicate any advantage to the colonies. They are a court of justice in the dernier resort for all appeals from the people of Great Britain; but they act in no such capacity for the inhabitants of the colonies; the house of peers having never heard or determined causes in appeal from the plantations, in which it ever was, and is, their duty to serve the subjects within the realm.

"Thus, incapable from their situation of being admitted to a participation with the people and peers of Great Britain in the British legislature, the colonists have legislatures of their own, which are subject to the king of Great Britain, as to their own proper head. The person, who, by the laws of Great Britain, is king of Great Britain, is *their* king; but they owe no allegiance to the lords and commons, to whom they are not subjects, but *fellow* subjects with them to the same sovereign."—Ibid., p. 435, 436.

See also some similar remarks of Mr. Haliburton, in his account of Nova Scotia, below; note (Q.)

NOTE H. (p. 117)

Provincia is derived by Festus from *pro* and *vincere*, according to which etymology it would mean a country *formerly conquered.* This etymology has been adopted by the moderns, with no other modification than that suggested by Vossius, viz. that *pro* should be taken not for *ante*, but for *procul. Provincia* would thus signify a country *conquered at a distance.* This etymology however seems objectionable on two grounds: 1. *Provincia* is not formed by a proper analogy from *vinco:* it ought rather to be formed from a past tense or participle, like *victor*, *victoria.* 2. The derivation from *vinco* does not satisfactorily explain the other meaning of *provincia*, viz. function, department, business; which it appears to have had at an early period, since this usage occurs in familiar language: see the examples from Plautus and Terence cited by Forcellini in v. Hence, too, Livy uses the word for the division of the duties of the consuls generally; as viii. 22. Inter consules provinciis comparatis, bello Græci persequendi Publilio evenerunt; Cornelius altero exercitu Samnitibus, si qua se moverent, oppositus. xxvii. 36. Consulatum inde ineunt C. Claudius Nero et M. Livius iterum; qui, quia jam designati provincias sortiti erant, prætores sortiri jusserunt. C. Hostilio urbana evenit; addita et peregrina, ut tres in provincias exire possent. xxx. 27. Principio insequentis anni, M. Servilius et Ti. Claudius, senatu in Capitolium vocato, de provinciis retulerunt. Italiam atque Africam in sortem conjici, Africam ambo cupientes, volebant. xxxiii. 25. L. Furius et M. Claudius Marcellus, consulatu inito, quum de pro-

vinciis ageretur, et Italiam utrique provinciam senatus decerneret, ut Macedoniam cum Italia sortirentur petebant. See also xl. 18, and the oration of Cicero De Provinciis Consularibus.

It seems to me therefore most probable that *provincia* is contracted from *providentia*, and originally meant that which a person had to look after, to attend to, to care for; that its primitive meaning was business, function, department; and that it acquired the secondary sense of a foreign dependency of Rome, because the management of the district was the department of one of the consuls or prætors.

The contraction of *provincia* from *providentia* is not greater than in other similar words; and the change of *t* into *c* after *n* has nothing remarkable. *Concio* from *conventio* affords a parallel to both changes. "In words of common use, (says Mr. Donaldson), when they exceed a certain length, and especially in those which are compounds, the process of shortening and softening always takes place, sometimes to an extent which renders it difficult to discern the elements of which they were originally made up. Who would suppose, on the first inspection, that *concio* was *con-ven-tio?*" —New Cratylus, p. 194. In some of the languages derived from the Latin, *t* is regularly changed into *c* in the terminations *antia* and *entia;* as *fragrancia, creencia, dolencia,* Spanish; *espérance, bienveillance,* &c. French.—See Diez, Rom. Gramm., vol. ii. p. 317.

Similar changes of signification have taken place in other words. Thus the word διοίκησις, instead of its original sense of *administration,* came to mean a division of the Roman empire (see Gibbon, c. 17), and afterwards a district subject to a bishop. In like manner, the word *cura* or *cure,* as used in France, first signified the sphere of the duties of a parish priest, or his office, and afterwards the district over which his cure of souls extended. (See Ducange in *cura.*) The word *scir,* A. S., a share or shire, (*i. e.* a part cut off or divided; compare *sceran,* A. S., to shear or share,) likewise underwent an analogous change of meanings, though they succeeded one another in the reverse order. Having originally signified a division or district of a country, it came afterwards to signify the superintendence of such a district, and then superintendence, stewardship, or charge generally. Thus in the Anglo-Saxon version of St. Luke, xvi. 2, the words "redde tuam dispensationem" are rendered "Agyf þine scire," "give an account of thy stewardship." See Bosworth's A. S. dict. in Scir. Compare Grimm's Deutsche Rechtsalterthümer, p. 533.

NOTE I. (p. 126.)

The nature of some of the restrictions imposed upon a Roman provincial governor affords a pregnant evidence of the abuses of power which he was expected to commit.

The restrictions upon his power of buying in his province, and the reasons of them, appear in the following passages of Cicero's Verrine Orations.

"Videte majorum diligentiam, qui nihil dum etiam istiusmodi suspicabantur; veruntamen ea quæ parvis in rebus accidere poterant, providebant. Neminem qui cum potestate aut legatione in provinciam esset profectus, tam amentem fore putaverunt, ut emeret

argentum; dabatur enim de publico; ut vestem; præbebatur enim legibus. Mancipium putaverunt; quo et omnes utimur, et non præbetur a populo. Sanxerunt ne quis emeret mancipium, nisi in demortui locum. Si quis Romæ esset demortuus? immo, si quis ibidem. Non enim te instruere domum tuam voluerunt in provincia; sed illum usum provinciæ supplere. Quæ fuit causa, cur tam diligenter nos in provinciis ab emtionibus removerent? hæc, judices, *quod putabant ereptionem esse, non venditionem*, cum venditori suo arbitratu vendere non liceret. In provinciis intelligebant si is qui esset cum imperio ac potestate, quod apud quemque esset, emere vellet, idque ei liceret; fore, uti, quod quisque vellet, sive esset venale, sive non esset, quanti vellet, auferret." In Verr. Act. II. lib. iv. c. 5.

" Sunt vestrum, judices, aliquam multi, qui L. Pisonem cognoverunt, hujus L. Pisonis, qui prætor fuit, patrem. Is cum esset in Hispania prætor, qua in provincia occisus est, nescio quo pacto, dum armis exercetur, annulus aureus, quem habebat, fractus est et comminutus. Cum vellet sibi annulum facere, aurificem jussit vocari in foro, ad sellam, Cordubæ, et ei palam appendit aurum. Hominem in foro sellam jubet ponere, et facere annulum, omnibus præsentibus. Nimium fortasse dicet aliquis hunc diligentem. hactenus reprehendat, si quis volet: nihil amplius. verum fuit ei concedendum. filius enim L. Pisonis erat, ejus qui primus de pecuniis repetundis legem tulit." Ibid. c. 25.

" Quid enim tibi nave opus fuit? qui, si quo publice proficisceris, et præsidii et vecturæ causa, sumtu publico navigia præberentur, privatim autem nec proficisci quoquam posses, nec arcessere res transmarinas ex iis locis, in quibus tibi habere, mercari nihil liceret." Act. II. lib. v. c. 18.

According to the earlier Roman practice, a provincial governor was not allowed to take his wife into his province. (See Heinecc. Ant. Rom. lib. i. § 109.) This regulation appears to have been a remnant of the old military discipline. Suetonius says of Augustus: " disciplinam severissime rexit; ne legatorum quidem cuiquam nisi gravate hibernisque demum mensibus permisit uxorem intervisere." (Oct. c. 24.) The rule was gradually relaxed under the empire: see in Tacitus Ann. iii. 33-4, a debate in the senate on a proposal to change the law, containing a statement of the arguments on both sides of the question. Even, however, at a later time it was thought to be better that a provincial governor should not be accompanied by his wife. Thus Ulpian says in a passage of his treatise De Officio Proconsulis, preserved in the Digests: " Profiscisci autem proconsulem melius quidem est sine uxore; sed et cum uxore potest, dummodo sciat senatum, Cotta et Messala consulibus, censuisse futurum, ut, si quid uxores eorum, qui ad officia proficiscuntur, deliquerint, ab ipsis ratio et vindicta exigatur." Dig. lib. i. tit. 16. fr. 4. § 2.

The Theodosian Code declared that if a governor, or any of his sons, grandsons, friends or servants, should contract to marry any woman in the province, the contract should not bind her. The law begins thus: " Si quis in potestate publica positus atque honore provinciarum administrandarum, qui parentibus aut tutoribus aut curatoribus aut ipsis quæ matrimonium contracturæ sunt *potest esse terribilis*, sponsalia dederit," &c. Cod. Theod. lib. iii. tit. 6. l. 1. Compare Bingham's Christian Antiquities, b. xxii. ch. 2. § 7.

A passage in the Digests however allows a governor to take a concubine from his own province: "Concubinam ex ea provincia in qua quis aliquid administrat, habere potest." Lib. xxvi. tit. 7. fr. 5.

NOTE K. (p. 133.)

According to Suetonius, Augustus attempted to place the citizens resident in the Italian colonies on a footing of practical equality with those resident at Rome, by enabling the former to transmit their votes in writing to Rome. "Ad hunc modum urbe urbanisque rebus administratis, Italiam duodetriginta coloniarum numero deductarum ab se frequentavit, operibusque ac vectigalibus publicis plurifariam instruxit: etiam jure ac dignatione urbi, quodam modo pro parte aliqua, adæquavit; excogitato genere suffragiorum, quæ de magistratibus urbicis decuriones colonici in sua quisque colonia ferrent, et sub diem comitiorum obsignata Romam mitterent." Oct. c. 46.

The partial adoption of this contrivance shows the impracticable nature of the constitution which the Julian law was intended to introduce.

Under the empire, the colonies and municipia of Italy, and even the provinces, obtained a sort of representation in the senate. "At this time (says Walter, in his History of the Roman Law), the senate was no longer composed exclusively of persons born in Rome, but the most distinguished persons from the municipia and colonies, and even from the provinces, were received into it; which, for a time, produced a favourable influence upon the morals of the city. A senator of this sort acquired by his appointment a domicile in Rome; though he retained an honorary right of citizenship and a domicile in his native town. But he was not able to visit his estates in the provinces (excepting Sicily and Gallia Narbonensis), without the special permission of the emperor. It was also subsequently ordained, in order to bind the foreign senators more closely to Italy, that they must purchase land in Italy to the value of a certain proportion of their property." (p. 286-7.)

If the Italian communities at the end of the social war had been close oligarchies, it is conceivable that an arrangement might have been made for deputing two or three members of each oligarchy to the Roman senate. Such a deputation would, however, have approached closely to the modern idea of political representation.

NOTE L. (p. 155.)

As the political relations of Great Britain and Ireland in the last century are frequently adverted to, by way of illustration, in the above essay; as the changes in those relations which took place in 1782 and 1783 are not now generally remembered; and as the political relations of Great Britain and Ireland have still a practical importance, on account of the continued agitation of the question of a repeal of the Union, I subjoin in this note a succinct statement of the nature and grounds of those changes, together with some introductory remarks in explanation of the system by which Ireland was governed during the preceding part of the century.

The political relations of Ireland and England before the Revolution of 1688 partook of the indeterminate character which belonged to the institutions of both countries prior to that event; but, during this period, Ireland seems to have been constantly regarded as a dependency of England, and not (like Scotland) as an independent kingdom whose king was also king of England. Sometimes Ireland was considered as a dependent colony, planted by Englishmen in a country inhabited by a semi-barbarous race; at other times it was regarded rather as a dependency acquired by conquest from the natives. After the expulsion of James II. and the final success of King William's arms, the practical subjection of Ireland to England was considered as established beyond all doubt, and the English or British parliament legislated for the internal affairs of Ireland without hesitation whenever there appeared to be any occasion for its interference.—(See Plowden's Historical Review of Ireland, vol. i. p. 195. 197. 229.) The Irish Catholics were excluded from the Irish parliament at the revolution, and were shortly afterwards subjected to numerous civil disabilities, so that (to use Mr. Plowden's words) they had a physical, not a political existence. The project of a union of Ireland with England was started in Queen Anne's reign, but was rejected by the English ministry as a less easy mode of governing the country than the existing practice of keeping it in a state of permanent debility, and managing it through a few of the heads of the Irish aristocracy.—(Plowden, ib. p. 218.)

The more frequent exercise of the legislative power by the English parliament was not, however, silently acquiesced in by Ireland. In 1698 Mr. William Molyneux, one of the members for the University of Dublin, published a tract entitled, "The case of Ireland's being bound by Acts of Parliament in England stated." Molyneux was a friend and admirer of Locke, and the idea of composing this tract (in which he called in question the dependence of Ireland upon England) was probably suggested to him by some of the principles contained in Locke's Essay on Government. The tract was thought of sufficient importance to be referred to a select Committee of the English House of Commons; and upon a report of this Committee the house resolved, "That the book published by Mr. Molyneux was of dangerous tendency to the crown and people of England by denying the authority of the king and Parliament of England to bind the kingdom and people of Ireland, and the subordination and dependence that Ireland had and ought to have upon England as being united and annexed to the imperial crown of England." Other resolutions strongly asserting the supremacy of the English Parliament over Ireland were added. The Irish Parliament made no answer to these proceedings.—(Plowden, vol. i. p. 202—5. 389.)

In the year 1719, a decree of the Irish court of Exchequer in favour of the defendant in the cause was reversed upon appeal by the Irish House of Lords. The cause was afterwards carried by appeal to the English House of Lords, which confirmed the original decree. The plaintiff then petitioned the Irish House of Lords to support its decision; whereupon the Irish House of Lords resolved that the fines imposed on the sheriff (who had obeyed the order of the Irish House of Lords) should be taken off, and ordered that the barons of the Irish exchequer should be taken into the custody of

the black rod. When the English House of Lords became aware of these proceedings, they passed resolutions strongly supporting the barons of the Irish exchequer, and caused a bill to be introduced "for better securing the dependency of the kingdom of Ireland upon the crown of England." This bill became the Act of 6 Geo. I. c. 5, which, after reciting that "attempts have been lately made to shake off the subjection of Ireland unto, and dependence upon, the imperial crown of this realm which will be of dangerous consequence to Great Britain and Ireland," and that "the lords of Ireland in order thereto have of late, against law, assumed to themselves a power and jurisdiction to examine, correct, and amend the judgments and decrees of the courts of justice in the kingdom of Ireland," provides "that the said kingdom of Ireland hath been, is, and of right ought to be subordinate unto, and dependent upon, the imperial crown of Great Britain, as being inseparably united and annexed thereunto; and that the king's majesty, by and with the advice and consent of the lords spiritual and temporal and commons of Great Britain in Parliament assembled, had, hath, and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the people and the kingdom of Ireland." And it further provides that "the House of Lords of Ireland have not, nor of right ought to have, any jurisdiction to judge of, affirm, or reverse any judgment, sentence or decree, given or made in any court within the said kingdom; and that all proceedings before the said House of Lords upon any such judgment, sentence, or decree, are and are hereby declared to be utterly null and void to all intents and purposes whatsoever."

But although in the first half of the 18th century the English Parliament would not allow its direct supremacy over Ireland to be questioned, the ascendency of England over Ireland was maintained by indirect means The nature of the means by which the English power was upheld in Ireland is explained by Plowden in the following passage. After having stated that Lord Townshend was appointed lord lieutenant in October, 1767, he proceeds thus:—"This nobleman was selected to introduce a very important change in the system of governing Ireland. The choice was, in many points, judicious. In order to attempt the arduous task of supplanting the deep rooted influence of the Irish oligarchy, it was requisite that the lord lieutenant, to whom that power was to be transferred, should be endowed with those qualities that were most likely to ingratiate him with the Irish nation. The new lord lieutenant excelled all his predecessors in that convivial ease, pleasantry, and humour, so highly prized by the Irish of every description. The majority, which had been so dearly bought in the Commons by those who had heretofore had the management of the *English interest*, was now found not altogether so tractable as it had heretofore been. There were three or four grandees, as Dr. Campbell observed, who had such an influence in the House of Commons that their coalition would, at any time, give them a clear majority upon any question. To gain these had been the chief anxiety of former governors. They were sure to bring over a proportionate number of dependents; and it had been the unguarded maxim to permit subordinate graces and favours to flow from or through the hands of these leaders whom experience now showed to be as irritable and versatile as the most insignificant of their followers.

Formerly these principals used to stipulate with each new lord lieutenant, whose office was biennial and residence but for six months, upon what terms they would carry the king's business through the House; so that they might not improperly be called *undertakers*. They provided that the disposal of all court favours, whether places, pensions, or preferments, should pass through their hands, in order to keep their suite in an absolute state of dependence upon themselves. All applications were made by the leader, who claimed as a right the privilege of gratifying his friends in proportion to their numbers. Whenever such demands were not complied with, then were the measures of government sure to be crossed and obstructed; and the session of Parliament became a constant struggle for power between the heads of parties, who used to force themselves into the office of lord justice according to the prevalence of their interest. This evil had been seen and lamented by Lord Chesterfield; and his resolution and preparatory steps for undermining it probably contributed not a little to his immediate recall upon the cessation of the danger, which his wisdom was thought alone competent to avert.

"This was the system which Lord Clare said, *the government of England at length opened their eyes to the defects and dangers of; they shook the power of the aristocracy, but were unable to break it down.* The monopoly of civil power long survived the administration of Lord Townshend. No small share of it rested with that noble earl, who thus faithfully describing it practically knew the inability of the English government to break it down. The primary object of Lord Townshend's administration was to break up the monopolizing system of this oligarchy. He, in part, succeeded, but by means ruinous to the country. The subalterns were not to be detached from their chiefs but by similar though more powerful means than those by which they had enlisted under their banners. The streams of favour became not only multiplied but enlarged, consequently the source of remuneration the sooner exhausted. Every individual now looked up directly to the fountain head, and claimed and received more copious draughts. Thus, under colour of destroying an overgrown aristocratic power, all parliamentary independence was completely secured by government. The innovation naturally provoked the deserted few to resentment: but they were bereft of their consequence when left to their individual exertions. They took refuge under the shelter of patriotism, and they inveighed with less effect against the venality of the system, merely because it had taken a new direction and was somewhat enlarged. The bulk of the nation, and some, though very few, of their representatives in Parliament were earnest, firm, and implacable against it."—(Plowden, ib. p. 385, 386.)

The English party in Ireland continued to submit to the supremacy of Great Britain until the successful revolt of the American colonies suggested to them the idea of independence; whilst, at the same time, the weakness of England and the imposing attitude of the Irish volunteers afforded them facilities for obtaining it. Ireland, being at this time (as Burke called it in the House of Commons, 2nd of April, 1778) the chief dependency of the British crown, naturally aspired to follow the example of other weaker though more distant dependencies. Accordingly, Mr. Grattan, on the 19th of April, 1780, moved in the Irish House of Commons a

resolution that "no power on earth, save the king, lords, and commons of Ireland, had a right to make laws for Ireland." The question was debated, but not put from the chair.*

On the 11th December, 1781, Mr. Flood moved resolutions relating to Poyning's law, and he brought the subject under the consideration of the House on several subsequent days. This Irish Act (passed in the 10th of Hen. VII.) was considered one of the main obstacles to the independence of Ireland. Its most important provision was that which prohibited any bill from being introduced into either house of the Irish Parliament which had not been approved by the king in council. Mr. Flood maintained, in his first speech on the subject, that this law was originally intended as a restraint, not on the Irish Parliament but on the viceroy, over whom the king, on account of the difficulty of communicating with Ireland, exercised an imperfect control.† This view of the purpose of Poyning's law seems to be correct; but, at all events, its main provision was evaded by the practice of introducing the heads of a bill which had been adopted in the Irish Parliament. The law had, in truth, little practical importance; and it might have been repealed without any alteration in the system by which the virtual dependence of Ireland upon England was secured.—(Plowden, ib. p. 395. 552.)

On the 22d of February, 1782, Mr. Grattan moved in the Irish House of Commons an address to the crown, of which the following are the most material clauses:—"To assure His Majesty that the people of Ireland were a free people; that the crown of Ireland was a distinct kingdom, with a Parliament of their own, the sole legislature thereof. To assure His Majesty that by their fundamental laws and franchises which they, on the part of this nation, claimed and challenged as their birthright, the subjects of that kingdom could not be bound, affected, or obliged by any legislature save only the king, lords, and commons of that His Majesty's realm of Ireland, nor was there any other body of men who had power or authority to make laws for the same." The motion of the attorney-general, that the consideration of the address should be postponed until the 1st of August, was carried by 137 to 68.

On the 26th February, Mr. Flood followed up Mr. Grattan's motion by moving the two following resolutions:—"First, that the members of this House are the only representatives of the people of Ireland. Second, that the consent of the Commons is indispensably necessary to render any statute binding." Upon a division, these resolutions were negatived by 137 to 76.

By this time the fall of Lord North's ministry had been decided, and the Rockingham administration had succeeded. But before

* The following dates are important with reference to the transactions described in the text:—Convention of Saratoga, 1777; Capitulation of Lord Cornwallis at York-town, 19th October, 1781; Recognition of American independence by England, 24th September, 1782.

† Mr. Flood remarked that, in the days of Henry VII., voyages between England and Ireland were less frequent than between Europe and America in his own time; and that, consequently, many things happened in Ireland which were not known till long after in England.—(Plowden, ib. p. 552.) This remark illustrates the change in the power of governing a territory which is produced by an increased facility of communication.—(See above, ch. iv.)

the new ministers had time to take any step with respect to Ireland, Mr. Eden, the late secretary for Ireland, returned to London; and, without communicating his intention to the new ministry, on the 8th of April moved in the English House of Commons for leave to bring in a bill to repeal so much of the Act 6 Geo. I. as asserted the right of the king and Parliament of Great Britain to make laws to bind the kingdom of Ireland. The motion was withdrawn in compliance with the general wish of the House; and, on the following day, Mr. Fox communicated a message from the king, recommending a consideration of the discontents and jealousies in Ireland, in order to such a final adjustment as might give satisfaction to both kingdoms. The address was agreed to unanimously.

In the first debate which took place after the arrival of the Duke of Portland as lord lieutenant of Ireland, it was evident from the statements of Mr. Hutchinson, the secretary of state, that the new administration had resolved to concede the independence of Ireland. In the course of this debate Mr. Grattan said, "The people of Ireland protest against a dependent legislature, against the abomination of a foreign legislature. We are friends to England on perfect political equality. This House of Parliament knows no superior; the men of Ireland acknowledge no superiors; they have claimed laws under the constitution and the independence of Parliament under every law of God and man. I cannot imagine that the present ministers of England will oppose those rights of the Irish nation: they have been for many years advocates for the liberties of England and of the colonies; it was the great rule of their opposition, and it is impossible that men who are ready to grant independence to America can oppose the independence of Ireland." Mr. Grattan then moved an address to the crown (which was agreed to unanimously), containing the following passages:—"To assure His Majesty that his subjects of Ireland were a free people; that the crown of Ireland was an imperial crown inseparably annexed to the crown of Great Britain, on which connexion the interest and happiness of both nations essentially depended; but that the kingdom of Ireland was a distinct kingdom with a Parliament of her own, the sole legislature thereof: that there was no body of men competent to make laws to bind this nation except the king, lords, and commons of Ireland, nor any other parliament which had any authority or power of any sort whatsoever in that country save only the Parliament of Ireland.—To assure His Majesty that they had seen with concern certain claims advanced by the Parliament of Great Britain in an Act intituled, 'An Act for the better securing the dependency of Ireland;' an Act containing matter entirely irreconcilcable to the fundamental rights of that nation. That they conceived that Act, and the claims it advanced, to be the great and principal cause of the discontents and jealousies in that kingdom."

On the 17th of May resolutions were moved in the English Houses of Parliament by Lord Shelburne and Mr. Fox, and carried unanimously, to the following effect:—

"First, that it was the opinion of that House that the Act of 6 Geo. I., intituled &c., ought to be repealed. Second, that it was the opinion of that House that it was indispensable to the interest and happiness of both kingdoms that the connexion between them should be established by mutual consent upon a solid and per-

manent footing, and that an humble address should be presented to His Majesty, that His Majesty would be graciously pleased to take such measures as His Majesty in his royal wisdom should think most conducive to that important end."

On the 27th of May, in a debate upon the Duke of Portland's speech from the throne, Mr. Grattan expressed his satisfaction with the concessions made by the British Parliament. "I understand (he said) that Great Britain gives up *in toto* every claim to authority over Ireland. I have not the least idea that, in repealing the 6 Geo. I., Great Britain should be bound to make any declaration that she had formerly usurped a power. Another act of great magnanimity in the conduct of Britain is, that everything is given up unconditionally. This must for ever remove suspicion." He then moved a series of resolutions, of which the following is the most important:—"To assure His Majesty that we conçeive the resolution for an unqualified unconditional repeal of the 6 Geo. I. to be a measure of consummate wisdom and justice, suitable to the dignity and eminence of both nations, exalting the character of both, and furnishing a perpetual pledge of mutual amity." These resolutions were passed almost unanimously.

In consequence of this agreement between the Parliaments of Great Britain and Ireland, the Irish Parliament passed a bill repealing the material provision of Poyning's law, and the British Parliament passed a bill repealing the 6 Geo. I.—(22 Geo. III. c. 53.)

In the mean time the existing administration had been dissolved in consequence of Lord Rockingham's death, and Lord Shelburne's ministry had succeeded (13th July), in which Lord Temple was lord lieutenant of Ireland.

During the proceedings which have been just described, Mr. Flood and the small number of his adherents in the Irish House of Commons threw doubts upon the sincerity of England and the completeness of the concession which she had made.—(Plowden, vol. i. p. 619.) On the 19th December, Colonel Fitzpatrick made some complaints to the same effect in the English House of Commons, in consequence of the recent decision of an Irish cause by the court of King's Bench in England. In this debate Mr. Fox stated "that the intention of those ministers who had sent [assented to?] the repeal of the declaratory law was thereby to make a complete, absolute, and perpetual surrender of the British legislative and judicial supremacy over Ireland." On the following day Mr. William Grenville, the secretary to the lord lieutenant, stated, "that there was not a man in either kingdom more decidedly of opinion than his excellency was that the faith of England was pledged to Ireland for the truth of this proposition, that England had fully and completely renounced all legislative and judicial jurisdiction, and that nothing could be more conducive to the harmony and interests of both kingdoms than that this national faith should be preserved inviolate" On the 22nd of January, 1783, Mr. Secretary Townshend moved for leave to bring in a bill "for removing and preventing all doubts which have arisen or may arise concerning the exclusive rights of the Parliament and courts of Ireland in matters of legislation and judicature, and for preventing any writ of error or appeal from any of His Majesty's courts in

that kingdom from being received, heard, or adjudged in any of His Majesty's courts of the kingdom of Great Britain." The motion was seconded by Mr. W. Grenville, and was carried without a division. Before this bill had been read a second time in the House of Lords, the coalition ministry had come into office, (2d April,) and there was some hesitation as to proceeding with the bill. A long debate upon it took place in the Lords on the 14th of April, when Lord Abingdon opposed the bill, saying that he was willing to concede to the Irish Parliament the right of internal but not of external legislation. He also asked "if the people of Ireland wished to remain subjects of the crown of England. If they did, the moment that bill passed they were no longer so; for the subjects of the crown of England must be, and are of continual necessity, under the legislative authority of this country. The crown itself is under the legislative authority of this country; and of course those who are dependent upon this crown, so far as the constitution admits of it, must be so too. That they may be subjects of the king of England is true, and so they will be, and so are the people of Hanover subjects of the king of England. But does Ireland wish to be upon the footing of Hanover with this country? —and yet the case must and will be so. Do the people of Ireland wish to have seats in the British Parliament?—this bill incapacitates them from being members of the British legislature. It was by Acts of Parliament that the right of sitting in the two Houses of Parliament was regulated; and the people of Ireland not being to be bound by Acts of Parliament, they are in so much aliens *quoad* their claim to this right. From the moment that Act passed the Irish were no longer our fellow subjects." The Duke of Richmond supported the same view, saying that "not only in regard to peace and war, but in regard to rivalship in commerce, in regard to ecclesiastical matters, the separation created by the present bill would be materially alarming to England. Suppose that England should have occasion to go to war, and Ireland should find herself disposed to remain at peace, should refuse to give aid, and furnish her quota to the cause of her empire; suppose that, in negotiations for peace, the terms agreed on by the English ministers should be objected to by the Irish; suppose that in regulations and treaties of commerce with foreign states the Irish should contend with the English,—in these and a thousand other possible suppositions, was it possible that this total separation could be submitted to by the people of England? But there were other most important dangers to be apprehended." After adverting to the probable consequences of an admission of the Irish catholics and dissenters to an equality of political rights with the members of the established church, he added: "These were reasons that made it indispensably necessary for their lordships to inquire whether this was to be followed by any other measure, and whether the present ministers had adopted it as a part of a system upon which the mutual connexion of the two countries was to be established." The bill, however, ultimately passed without a division.—(See 23 Geo. III. c. 28.)

In the midst of the rapid ministerial changes which occurred at this period, and the differences of opinion which existed on other subjects, all parties (as Plowden remarks, vol. ii. p. 20) were agreed in giving independence to Ireland. This agreement of opinion

was probably owing to a conviction of the necessity of concession in the actual weakness of England, and not to any belief of the permanent advantages of the arrangement. The Duke of Portland had entertained a hope of inducing the Irish Parliament to recognise the supremacy of Great Britain over all the external relations of Ireland (Plowden, vol. i. p. 611; Hansard's Parl. Hist. vol. xxxiv. p. 977.); and Mr. Pitt, in his speech on the Union, alluded to the resolutions proposed by Lord Shelburne and Mr. Fox (above, p. 360), as proving that the arrangement of 1782 was not considered by its authors as final. But whatever might be thought of the policy of the arrangement, the English Parliament, after it had been once made, abstained scrupulously from interfering with the affairs of Ireland. In the discussion of the commercial resolutions of 1785, Ireland was constantly treated as an independent state, for which the English Parliament could no more legislate than it could for France; and the prospective provision for the regency made by the Irish Parliament in 1789 differed from that made by the British Parliament.—(See also Lord Grenville, 21st March, and Mr. Fox, 23rd March, 1797.) But although the English Parliament did not legislate for Ireland, no substantial change was made in the system of management by which the virtual dependence of Ireland was secured.—(Plowden, vol. ii. p. 277.) The virtual dependence of Ireland, notwithstanding the concessions which had been made by England, was more than once adverted to in Parliament after 1782. Thus Mr. Burke said on the 19th May, 1785, "To Ireland independence of legislature had been given: she was now a co-ordinate, though less powerful state; but pre-eminence and dignity were due to England; it was she alone that must bear the weight and burden of the empire; she alone must pour out the ocean of wealth necessary for the defence of it. Ireland, and other parts, might empty their little urns to swell the tide; they might wield their little puny tridents; but the great trident that was to move the world must be grasped by England alone—and dearly it cost her to hold it. Independence of legislature had been granted to Ireland; but no other independence could Great Britain give her without reversing the order and decree of nature. Ireland could not be separated from England; she could not exist without her; she must ever remain under the protection of England, her guardian angel." And in a discussion on the commercial treaty with France in 1787 in the English House of Commons, Mr. Flood remarked that "the Parliament of Great Britain was the imperial Parliament, and it was, therefore, the indispensable duty of that Parliament in every great national measure to look to the general interests of the empire, and to see that no injurious consequences followed to the peculiar interests of any part of it;" a view which, as Mr. Plowden remarks, vol. ii. p. 176, was inconsistent with the supposition of the virtual independence of Ireland. Mr. Grattan even opposed the commercial resolutions of 1785, on the ground that they would bring about the subordination of Ireland to England by producing a similarity of their institutions. "It is here said," he remarked, "that the laws respecting commerce and navigation should be similar, and inferred that Ireland should subscribe the laws of England on those subjects, that is, the same law, the same legislature; but this argument goes a great deal too far, it goes to the

army, for the mutiny bill should be the same: it was endeavoured to be extended to the collection of your revenue, and is in train to be extended to your taxes; it goes to the extinction of the most invaluable part of your parliamentary capacity; it is an union, an incipient and a creeping union; a virtual union establishing one will in the general concerns of commerce and navigation, and reposing that will in the Parliament of Great Britain; an union where our Parliament preserves its existence after it has lost its authority; and our people are to pay for a parliamentary establishment without any proportion of parliamentary representation."—(Speech in the Irish House of Commons on the 12th August, 1785.) Mr. Grattan, however, in a long address to the crown which he moved in the Irish House of Commons on the 6th of June, 1800, treated Great Britain and Ireland as parts of the same empire. The following is a passage of this address:—"That giving the name of Union to the measure is a delusion; the two kingdoms are already united to each other in one common empire,—one in unity of interest and unity of constitution, as has been emphatically pronounced from the throne by your Majesty's former viceroy, bound together by law, and, what is more effectual than law, by mutual interest, mutual affection, and mutual duty, to promote the common prosperity of the empire; and it is our glory and happiness that we form an inseparable part of it."

The virtual dependence of Ireland was frequently adverted to in the debates on the Union, both in the English and Irish Parliament. Thus, Mr. Conolly dwelt upon the fact that there had been 116 placemen and pensioners at one time in the Irish House of Commons ever since the year 1782. Lord Castlereagh said, "You talk of national pride and independence, but where is the solidity of this boast? You have not the British constitution, nor can you have it consistently with your present species of connexion with Great Britain. That constitution does not recognise two separate and independent legislatures under one crown. The greater country must lead, the less naturally follow, and must be practically subordinate in imperial concerns; but this necessary and beneficial operation of the general will must be preceded by establishing one common interest."—(22d January, 1799.) Mr. W. Smith, in a subsequent debate, after having indicated the evils of a separation of Ireland from England, went on to say, "Some might reply, the British influence would operate as an antidote to the mischiefs apprehended, and would prevent legislative dissensions from weakening and tearing asunder the energies of the empire, or Irish independence from checking the views or injuring the interests of Britain. But that supposition he thought insultingly derogated from the practical independence of the Irish Parliament, which was thus allowed to be subordinate to that of Great Britain. Where an actual subjection thus existed, it might be rendered only the more mischievous and oppressive by being concealed behind a mask of nominal independence; and the desired antidote would be more effectually found in an union than in a division of legislatures." Lord Castlereagh, in a later debate, "referred to a more frequent and just ground of complaint in that House, that the Irish minister, acting as he did under the direction of a British cabinet, was not responsible to the Irish Parliament from the moment of his withdrawing from this kingdom, unless, by a de-

rogation from our independence, we should impeach him at the bar of the Parliament of Great Britain for offending against the constitution of Ireland. Who advised the measures of the Irish government?—The English minister. And how could the Irish Parliament meet him? Who administered the great seal of England, without which no legislative Act could be ratified?—An English minister. And how could the Irish Parliament meet him? In short, how could an efficient and constitutional responsibility be obtained but by making the jurisdiction of Parliament as comprehensive as the executive power? And this could be effected by an union alone."—(15th February.) Lord Lansdowne had remarked in a debate in the House of Lords on the 21st of March, 1797, that "the lord lieutenant of Ireland as a minister was accountable to the British as well as to the Irish Parliament; and, therefore, the British House of Lords had a right to watch over the measures of his administration, and to censure or advise him as they might deem proper:" and Mr. Fox made similar remarks in the House of Commons at the same time. Lord Minto adduced the following proofs of the virtual subordination of Ireland to England, in the debate on the Union, in the House of Lords:—"Ireland claims a sovereign independent government, and that claim is freely admitted by our own; while we exercise, nevertheless, with the acquiescence of Ireland, an open ascendency and control in every one of its concerns. . . . . Ireland must take her part in all the wars of Great Britain: she must bear her share of their burthens, and incur all their hazards. She may lose a province, or may become herself a province of the enemy; yet Ireland cannot, by the utmost success of the war, acquire an acre of new territory to the Irish dominion. Every acquisition made by the forces of the empire, however great her share may have been in the danger or exertion, accrues to the crown of Great Britain. . . . . Ireland claims no sovereignty in any one of the foreign possessions or provinces of the British empire. The Irish Parliament has never asserted or conceived the right of legislating for any of the conquests of the king of England, that is to say, of the king of Ireland. Ireland has planted no Irish colonies, but has furnished planters to all those of Great Britain. In a word, this whole class of sovereign rights and capacities, however inherent in the very nature of sovereignty, is wholly wanting in that of Ireland. If we were asked to define, or at least to describe an independent sovereignty, should we err much by saying it is a state which can make war and peace, which can acquire dominion by conquest, and which can plant colonies and establish foreign settlements? And if we would describe a subordinate and dependent country, could we do it better than by saying it is a country which must contribute her quota to all the wars of a neighbouring kingdom, must incur all the risks of those wars, and partake in all their disasters; while all that is acquired by their success falls, like the lion's share, to that country with which it claims to be co-ordinate and co-equal."

In form, however, Ireland at this time was an independent state, and the connexion between the two crowns did not render Great Britain and Ireland parts of the same empire. That the rules of succession to the crown might become different was proved by the proceedings of the Irish Parliament respecting the regency in 1789. The insufficiency of the union of the crowns to ensure the supre-

macy of Great Britain over Ireland was pointed out by Lord Abingdon in his remarks already cited, (above, p. 362;) and was proved more cogently by Lord Grenville in his speech on the Union. After having observed that the settlement in 1782 did not supply the link which by the abrogation of the former system had been destroyed, Lord Grenville proceeds to say, "In looking further into the relative state of the two countries, he would examine into the nature of their connexion, and what was the bond which held together countries ruled by separate and independent legislatures? it was merely this, that one common sovereign ruled over them,—a sovereign constituted equally by the laws of both countries. This identity of the royal power was now the only remaining bond of connexion. In a pure and absolute monarchy such a bond of connexion might possibly be sufficient; but in a mixed government and limited monarchy as was the British, and the other component parts of the government of the countries distinct and separate, such a bond of union must be obviously imperfect. . . . . With respect to the supposed existing bond of connexion between Great Britain and Ireland, he was not afraid to say that it was absolutely null. If by the British constitution, the royal power could be exercised free from the control of Parliament, then, indeed, the regal identity might be a bond of connexion; but if the whole system of the regal power was not only under the control, but could not go on without the aid and assistance of Parliament, and the Parliaments of each kingdom were to remain distinct and separate, then, he repeated, the bond of connexion was absolutely null."

The relations of Great Britain and Ireland during the period after 1782 were upon so unsound a footing that they could scarcely be permanent; but they might have remained unchanged some years longer if a crisis had not been precipitated by the disastrous events of the rebellion of 1798, the intrigues of some of the Irish malcontents with the French government and the French expeditions against Ireland. The attempts of the French upon Ireland are stated as the main ground for the Union in the king's message to the House of Lords, by which the subject was brought before the British Parliament on the 22nd of January, 1799. "His Majesty is persuaded that the unremitting industry with which our enemies persevere in their avowed design of effecting the separation of Ireland from this kingdom cannot fail to engage the particular attention of Parliament; and His Majesty recommends it to this House to consider of the most effectual means of counteracting and finally defeating this design; and he trusts that a review of all the circumstances which have recently occurred (joined to the sentiments of mutual affection and common interest) will dispose the Parliaments of both kingdoms to provide, in the manner which they shall judge most expedient, for settling such a complete and final adjustment as may best tend to improve and perpetuate a connexion essential to their common security, and to augment and consolidate the strength, power, and resources of the British empire."

NOTE M. (p. 204.)

I propose in this note to state the doctrines of the English courts as to the existence and purport of certain fundamental principles

to which the laws and other acts of the subordinate government of an English dependency (and especially of one acquired by conquest or cession) must conform.

The first attempt to lay down a rule upon this subject is in Lord Coke's report of Calvin's case, which involved the question as to the *status* of the Scotch *postnati*.

"There is a diversity between a conquest of a kingdom of a Christian king and the conquest of a kingdom of an infidel; for if a king come to a Christian kingdom by conquest, seeing that he hath '*vitæ et necis potestatem*,' he may at his pleasure alter and change the laws of that kingdom; but until he doth make an alteration of those laws, the ancient laws of that kingdom remain. But if a Christian king should conquer a kingdom of an infidel, and bring them under his subjection, then *ipso facto* the laws of the infidel are abrogated, for that they be not only against Christianity but against the law of God and of nature contained in the Decalogue; and in that case, until certain laws be established amongst them, the king by himself, and such judges as he shall appoint, shall judge them and their causes according to natural equity in such sort as kings in ancient times did with their kingdoms before any certain municipal laws were given, as before hath been said. But if a king hath a kingdom by title of descent, there, seeing by the laws of that kingdom he doth inherit the kingdom, he cannot change those laws of himself without consent of Parlament. Also if a king hath a Christian kingdom by conquest, as Henry II. had Ireland, after John had given unto them, being under his obedience and subjection, the laws of England for the government of that country, no succeeding king could alter the same without Parliament."—(2 Howell's State Trials, 638.)

The next attempt is in a statement by the Master of the Rolls of some principles laid down by the Privy Council upon an appeal from the plantations in 1722. According to that statement, the Council decided that "until the laws given by the conquering prince, the laws and customs of the conquered country shall hold place, unless were these are contrary to our religion, or enact anything which is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail."—(2 P. Williams, 76.)

The first case of importance in which the doctrines on this subject were considered is that of Fabrigas *v.* Mostyn, in 1773. This was an action for an assault and false imprisonment, brought in the Court of Common Pleas by Mr. Anthony Fabrigas, a native of Minorca, against Lieutenant-General Mostyn, the governor of the island. The facts proved at the trial were, that Governor Mostyn had arrested the plaintiff, imprisoned him, and transported him to Spain without any form of trial, on the ground that the plaintiff had presented to him a petition for a redress of grievances in a manner which he deemed improper. Mr. Justice Gould, who tried the cause, left it to the jury to say "whether the plaintiff's behaviour was such as to afford a just conclusion that he was about to stir up a sedition and mutiny in the garrison, or whether he meant no more than earnestly to press his suit and to endeavour to obtain redress for what seemed to him to be a grievance." If they thought that the latter was the case, he informed them that the plaintiff was

entitled to recover in the action.* The jury gave a verdict for the plaintiff, with 3,000*l.* damages. In the following Michaelmas Term an application was made for a new trial, which was refused by the whole Court. In delivering his opinion upon this application, Lord C. J. De Grey made the following remarks. After having described the imprisonment of Fabrigas by Governor Mostyn in Minorca, he proceeds thus:—"He is then confined on board a ship, under the idea of a banishment to Carthagena. I do believe Mr. Mostyn was

* The following remarks of the counsel for the defendant in this trial contain a plain and *naive* expression of the feeling, that a dependency is to be governed not for its own interest but for that of the dominant state:—

"Gentlemen, it will be time now for me to take notice, as I have gone so far into the general history, of another circumstance, which is notorious to all the gentlemen who have been settled in that island, as well governors as the other military gentlemen that have been there, that the native inhabitants of Minorca are but ill affected to the English and to the English government. It is not much to be wondered at. They are the descendants of Spaniards: they consider Spain as the country to which they ought naturally to belong; and it is not at all to be wondered at that these people are not well disposed to the English, whom they consider as their conquerors. A strong instance of that happened at the time of the invasion of Minorca by the French, when the French took it, which I believe was in the year 1756, the beginning of last war; and it is very singular that hardly a Minorquin took arms in defence of the island against the French, the strongest proof in the world that they were very well pleased at the country being wrested from the hands of the English. The French did take it, as we all very well know; but, thank God, we have it again. Of all the Minorquins in that island perhaps the plaintiff stands singularly and most eminently the most seditious, turbulent, and dissatisfied subject to the crown of Great Britain that is to be found in the island of Minorca. Gentlemen, he is, or chooses to be, called the patriot of Minorca. Now, patriotism is a very pretty thing among ourselves, and we owe much to it; we owe our liberties to it: but we should have but little to value, and perhaps we should have but little of the liberty we now enjoy, were it not for our trade. And for the sake of our trade it is not fit we should encourage patriotism in Minorca; for it is there destructive of our trade, and there is an end to our trade in the Mediterranean if it goes there. But here it is very well; for the body of the people of this country they will have it: they have demanded it; and in consequence of their demands they have enjoyed liberty which they will continue to posterity,—and it is not in the power of this government to deprive them of it. But they will take care of all our conquests abroad. If that spirit prevailed in Minorca, the consequence of it would be the loss of that country, and of course our Mediterranean trade. We should be sorry to set all our slaves free in our plantations."—(20 Howell, 105.) Concerning the neglect of Minorca by England, and the confusion and uncertainty of its laws, see a passage from Baron Maseres' Canadian Freeholder, cited in 20 Howell, 339. As to the ignorance of the English respecting Minorca when it was a dependency of England, compare the remark of Armstrong in his History of Minorca, (ed. 2. 1756.) "Allow me to tell you that, though there are many nations in Europe whose character is more interesting, whose affairs are more important, and whose virtues are more conspicuous, I am far from regretting the time I have spent in withdrawing the veil that has so long hid these islanders from the observation of their neighbours; and continued them, though they make a part of our British dominions, as utter strangers to the good people of England as the hunters of Æthiopia or the artificers of Japan."—(p. 213.)

led into this under the old practice of the island of Minorca, by which it was usual to banish. I suppose the old Minorquins thought fit to advise him to this measure. But the governor knew that he could no more imprison him for a twelvemonth than that he could inflict the torture; yet the torture, as well as banishment, was the old law of Minorca, which fell of course when it came into our possession. Every English governor knew he could not inflict the torture; the constitution of this country put an end to that idea."—(20 Howell, S. T. 181.) Governor Mostyn afterwards brought a Writ of Error in the King's Bench, which, after full argument, confirmed the judgment of the Court of Common Pleas.

It may be observed that, in this case, the Court of Common Pleas appears to have treated the governor of Minorca as not possessed of a legislative power. Lord C. J. De Grey says:—"One of the witnesses in the cause represented to the jury that, in some particular cases, especially in criminal matters, the governor resident upon the island does exercise a legislative power. It was gross ignorance in that person to imagine such a thing. I may say, it was impossible that a man who lived upon the island in the station he had done should not know better than to think that the governor had a civil and criminal power vested in him. In the island, the governor is the king's servant: his commission is from the king, and he is to execute the power he is invested with under that commission, which is to execute the laws of Minorca under such regulations as the king shall make in council."—(p. 178.) Lord Mansfield, in the King's Bench, adds the following remarks upon the legal responsibility of a governor:—"To make questions upon matters of settled law, where there have been a number of actions determined which it never entered into a man's head to dispute; to lay down in an English court of justice such monstrous propositions as that a governor, acting by virtue of letters patent under the great seal, can do what he pleases; that he is accountable only to God and his own conscience; and to maintain here that every governor in every place can act absolutely; that he may spoil, plunder, affect their bodies and their liberty, and is accountable to nobody,—is a doctrine not to be maintained; for if he is not accountable in this Court he is accountable nowhere. The King in Council has no jurisdiction of this matter; they cannot do it in any shape; they cannot give damages, they cannot give reparation, they cannot punish, they cannot hold plea in any way. Whenever complaints have been before the King in Council, it has been with a view to remove the governor; it has been with a view to take the commission from him which he held at the pleasure of the crown. But suppose he holds nothing of the crown, suppose his government is at end, and that he is in England, they have no jurisdiction to make reparation to the party injured; they have no jurisdiction to punish in any shape the man that has committed the injury. How can the arguments be supported that, in an empire so extended as this, every governor in every colony and every province belonging to the crown of Great Britain shall be absolutely despotic, and can be no more called in question than the king of France; and this after there have been multitudes of actions in all our memories against governors, and nobody has been ingenious enough to whisper them that they were not amenable?"—(p. 231.)

The other case of importance with reference to this subject is

that of Rex *v.* Picton. This was an indictment against Thomas Picton, Esq., for a misdemeanour in causing the torture to be inflicted upon Luisa Calderon, a free mulatta, in the island of Trinidad, when he was governor of the island. The indictment was found by a Grand Jury of the county of Middlesex in Hilary Term, 1804; and, after the issue of a *mandamus* to examine witnesses in Trinidad, it was tried in the King's Bench before Lord Ellenborough and a special jury, on the 24th February, 1806. In this trial it was proved that Luisa Calderon, who in December, 1801, was living in Trinidad with a man named Pedro Ruiz as his mistress, was suspected of being the accomplice of a person who had entered Ruiz's house, and had robbed it of some dollars there deposited. She was taken before a judicial officer for examination, but denied all knowledge of the offender. Being unable to obtain the desired confession, the judge applied to the governor for authority to put the girl to the torture, and the governor thereupon gave a written direction to that effect. Luisa Calderon was, in pursuance of this direction, twice subjected to the infliction called *piqueting*, and the desired confession was thereby extracted from her. It was alleged, in Governor Picton's defence, that the law of Trinidad authorized the use of the torture in cases of this sort before the cession of the island to Great Britain, and that this law had not been repealed since the cession; but the existence of any such law or legal practice was denied on the part of the prosecution. Lord Ellenborough left it to the jury to determine whether any such law existed; and he directed them first to consider "whether torture could be applied at the discretion of the judge, and if so, whether the application of torture to witnesses formed a part of the law of Trinidad at the time of the cession of that island." Upon receiving the opinion of the jury that there was no such law existing at the time of the cession, Lord Ellenborough said, "Then Governor Picton cannot derive any protection from that law. If no law obtained in that island at the time which authorized the severities practised upon this young woman, your verdict must be that the defendant is guilty." The jury accordingly found a verdict of *guilty*. It will be observed that, throughout this trial, Lord Ellenborough treated the legality of Governor Picton's conduct as exclusively dependent upon the existence of a law authorizing the use of the torture for witnesses at the time of the cession of the island, (see his remarks in p. 488 and 529, his summing up in p. 536–40, and his report of his own summing up in p. 584;) and that he nowhere expresses an opinion that the law, if it had existed, would have ceased to be in force when the island became an English dependency.

An application for a new trial in the case was made to the King's Bench on April 26, 1806. After argument, and the admission of additional affidavits, a new trial was granted on two grounds; first, because new evidence had been produced, showing the existence of the law of torture prior to the cession of the island: secondly, that a special verdict might be found, in order to raise the question, whether such a law could remain in force in an English dependency.—(p. 803, 4.)

The second trial came on before Lord Ellenborough and a special jury on June 11, 1808. In summing up the case to the jury, Lord Ellenborough said that the existence of the law of torture at the

time of the cession had, in his opinion, been proved by unquestionable evidence; and this being admitted, the next question to be considered was, "whether, when an island is ceded to the British arms, a species of punishment, a mode of investigating the truth so utterly inconsistent with the constitution and laws of Great Britain, and with the habits of its people, is virtually abrogated, and whether His Majesty, in continuing the former laws of the conquered country, must not be considered as doing so with an exception of the power to inflict torture." Lord Ellenborough proceeds to say that he will not intimate his opinion on this point, but he states it to be a matter of great doubt, referring to the expressions of Lord C. J. De Grey on the subject in Fabrigas *v.* Mostyn, which have been cited above, p. 369; and he then directs them to find a special verdict, in order that this point may be argued. The jury accordingly found "that, by the law of Spain, torture existed in the island of Trinidad at the time of the cession of that island to Great Britain." A special verdict containing the facts of the case was afterwards agreed to, (p. 863—884.)

The argument upon the special verdict subsequently came on, but the judgment of the Court upon the case was never given. The following is Mr. Howell's final note upon it: "No further proceedings took place in this case until Hilary Term, 52d Geo. III. A. D. 1812, when the Court ordered the defendant's recognizances to be respited until they should further order. It was thought by the bar that, had the opinion of the Court been delivered, judgment would have been given against General Picton; but that, upon a consideration of the merits, it would have been followed by a punishment so slight, and so little commensurate with the magnitude of the questions embraced by the case, as to have reflected but little credit upon the prosecution; and I have been informed, that it was by the advice of one of the learned counsel, who greatly distinguished himself in arguing the questions which arose in this case, that it was not again agitated."—(p. 955.)

In his argument for the Crown on the special verdict, Mr. Nolan attempts to prove that torture cannot be legally inflicted in a British dependency; inasmuch as it is repugnant to the fundamental principles of the British constitution, and as exemption from torture is a right of every British subject in every part of the dominions of the British Crown, (p. 892—901.) Lord Ellenborough, however, does not appear to have assented to Mr. Nolan's conclusions on this head, as may be inferred from his interlocutory remarks in this part of Mr. Nolan's argument.

Lord Ellenborough.—Do you mean that the king could not receive an island by capitulation under the protection of the Crown of Great Britain, with a continuation of all the laws, civil and ecclesiastical, as they subsisted in that island, before the cession, some of those being radically repugnant to the general principles of the constitution? for instance, this is a Spanish island, in which the authority of the inquisition had obtained, and which was in the habit of inflicting torture; would you say, if there had been an unconditional acceptance by the Crown of Great Britain, in all respects preserving the laws, civil and ecclesiastical, that supposing the inquisition and infliction of torture made a part of the law, the king could not have made a valid capitulation, so as to continue that constitution generally in the island of Trinidad?

Mr. Nolan.—My Lord, that is a question I did not mean to agitate upon the present occasion, as not being before the Court.

Lord Ellenborough.—Yes, incidentally it is; I want to know the extent of your proposition, and whether you contend that the Crown upon a conquest would, in making the capitulation, be limited to the extent I have stated.

Mr. Nolan.—I deliberately avoided going into that question; but if your Lordships wish me to argue it, I think there are very strong reasons which induce me to believe that the Crown is so limited.

Lord Ellenborough.—It made a part of your argument, and I wished to know if you could sustain it to that extent: you stated that the king could not make laws contrary to fundamental principles.

Mr. Nolan.—Whether the Crown can by stipulation accede to laws contrary to fundamental principles, I have not made a part of my argument.

Lord Ellenborough.—You must necessarily make it a part of your argument.

Mr. Nolan.—I think I shall be able to sustain the proposition that the Crown would be so limited.—p. 897, 898.

Lower down Mr. Nolan argues that the laws of a dependency conquered by or ceded to England are, from the time of the conquest or cession, replaced wholly or in part by the English laws. The following dialogue then takes place.

Lord Ellenborough.—If they are not governed by the old laws, by what laws are they governed? Either the old laws continue, or they cease on the conquest; the laws of the conquering country supersede them, or the old laws remain under certain qualifications. Who is to find out these qualifications? Some of the persons who are sent out from this country, judging for themselves, may say some of these laws are not consistent with the principles and spirit of the British constitution, and therefore it is not incumbent on us to obey them.

Mr. Nolan.—That is one of the points on which the learned judges have anticipated difficulty; and yet the rule is laid down in the way which I contend for it, in 2 P. Williams, 75, namely, that the laws and customs of the conquered country shall hold place, unless they are contrary to our religion, or enact any thing that is *malum in se*, or are silent; for in all such cases the laws of the conquering country shall prevail. But I am asked how the person who is to administer the law is to know it? In fact, the persons who administer the laws there must be Englishmen, or immediately under their control, and subject to their explanation and direction as to what the law is.

Lord Ellenborough.—The former laws they knew, because they lived under them, and obeyed them before but now the two laws are compounded. You will find sufficient difficulty in compounding the two laws. It is supposed to be a part of the customs of China to expose infants. It would be difficult, *primâ facie*, to say that was murder in them, and yet that is *malum in se*; it is as much *malum in se* as anything can be supposed to be.

Mr. Nolan.—Your Lordships observe that the position in 2 P. Williams says, the laws of this country shall prevail where those of the conquered country are either contrary to the laws of God or are totally silent.

Lord Ellenborough.—My difficulty is about these exceptions: "*fundamental principles*" and "*mala in se*" introduce some difficulty.

Mr. Nolan.—There is undoubtedly a difficulty of drawing the precise line; but so there is in all human matters, and this duty must be reposed in judicial discretion.

Lord Ellenborough.—All difficulty in drawing the line is avoided, if, in conformity to the 5th Resolution in Campbell and Hall, you say, "that the laws of a conquered country continue in force until they are altered by the conqueror." That leaves no uncertainty or difficulty, as the colony is to remain as it was before.—(p. 944, 945.)

Mr. Dallas, in his argument in support of the motion for a new trial, admits that the dictum of C. J. De Grey in Fabrigas *v.* Mostyn respecting torture is against him, but contends that it is a mere extra-judicial opinion not necessary to the decision of the case. The following remarks of Mr. Dallas upon Mr. Garrow's argument, that torture is contrary to the laws of England, are likewise deserving of attention. "It seems to me, as far as the authorities go, that not one of them touches the question. They appear to be cases in which the consideration is confined to the custom of England, and there being no such custom in England there can be no such law. But, independent of these authorities, the gentlemen on the other side contend that, on general grounds and principles, the abolition of torture must be understood, whatever were the terms of the capitulation which has taken place. I do not think Mr. Garrow referred us to any decided case, much less to the positive enactment of any statute; but he contented himself with stating what he deemed a parallel case. 'There can,' he said, 'be no such thing as slavery in England. The moment a slave puts his foot on English ground he becomes free.' I admit it; I admit that the case is parallel, and it leads to this conclusion,—there can be no such thing as torture in *England*. But in order to make it applicable to his argument, Mr. Garrow must push his doctrine to this extent, viz., that because there is no torture in England there can be no torture in any other country; he must contend that because slavery cannot exist in England, therefore slavery cannot exist in the colonies. If his doctrine, that because there is no torture in England, there can be no torture in a colony subject to England, could prevail, it would have this effect: according to my learned friend's analogy, if by force of arms any foreign dominion has been acquired, for instance St. Lucie, Martinique, or any other colony, it would follow that, because there was no slavery in England, there could be none in those colonies. If it were true that, because there is no torture in England, there can be no torture in Trinidad, the doctrine and the principle on which it is founded would let loose all the slaves in every island that ever was acquired by force of British arms. It seems to me that the argument built upon my learned friend's analogy tends the other way, and is against himself. 'There can be no such thing,' says my learned friend, 'as slavery in England, but there may be such a thing as slavery in the colonies;' and I say, in like manner, though there can be no such thing as torture in England, there may be in the colonies. His illustration establishes nothing for himself, but is directly at variance with what it is meant to support."—(p. 774, 775.)

On a review of the preceding statement it will be seen, that the

law on the subject under consideration rests exclusively on judicial dicta; and that the authority or applicability of some of these dicta is subject to doubt, seeing that they are (as the dictum of C. J. De Grey in Fabrigas *v.* Mostyn) unnecessary to the decision of the question before the Court, or (as the rules in Peere Williams) unaccompanied with a statement of the facts of the case. The only principle which has been expressly decided is that involved in Fabrigas *v.* Mostyn; where the governor's proceeding was professedly exceptional and without legal precedent, and could only be justified on the ground that the governor had the power of arbitrary imprisonment without necessity.

The rule as to the cessation of laws in a conquered pagan country which are inconsistent with the law of God (laid down in Calvin's case) is treated by Lord Mansfield in Campbell *v.* Hall, and also by Mr. Justice Gould in his summing up in Fabrigas *v.* Mostyn, (20 Howell 162) as obsolete. (See further in Clark's Colonial Law, p. 4, note.)

With respect to the cessation of laws which contain anything *malum in se*, or contrary to the fundamental principles of the British constitution, all that has been decided is to be collected from the cases of Fabrigas *v.* Mostyn, and Rex *v.* Picton, the material parts of which have been cited above.

The expressions of Lord Ellenborough during the argument of Rex *v.* Picton render it probable that if any similar case should hereafter come before the Courts, the doctrine as to fundamental principles would not be extended. It is certain that no favour would be shown to this doctrine if the *argumentum ab inconvenienti* were allowed to have any weight; for if the judges of a dependency could nullify any law by declaring it to be inconsistent with what they might deem to be a fundamental principle of the British constitution, all its laws would manifestly be at their mercy; inasmuch as the phrase "fundamental principles of the British constitution" has not obtained any determinate meaning. The most convenient course clearly is (as Lord Ellenborough suggests), that all the laws of a conquered or ceded dependency should remain in force until they are expressly repealed by competent authority.

It may be remarked that in the cases cited above, the doctrine in question is considered only with reference to the laws of a conquered or ceded dependency. But if the existence of any such fundamental principles be admitted, it is manifest that the laws of a dependency acquired by colonization must conform to them not less than the laws of a dependency acquired by conquest or cession.

NOTE N. (p. 276.)

The following account of the attempts of the Austrian Government to extirpate the Bohemian language, and to substitute the German language in its place, is given by Mr. Turnbull, in his work on Austria.

"The language of Bohemia, except in a few of the western districts immediately bordering on Saxony, is still that old Slavonic, which, with some variations of dialect, forms likewise the vernacular tongue in Poland, Russia, a large portion of Hungary, the Illyrian

provinces, and the northern parts of European Turkey. To abolish this characteristic distinction between the Bohemian and Austrian subjects was long a favourite object of that policy which has sought to establish an absolute identity of language, laws, and institutions, in all the provinces of the empire: but the religion, the language, and the domestic habits of a people can be changed only by very slow degrees, even in cases where the change can be effected at all; and it not unfrequently happens that the measures pursued to enforce the alteration are precisely those which prevent its adoption. * * * * In vain were ordinances issued, commanding the exclusive use of the German tongue in all transactions between the public functionaries and the people, in all parochial and districtual concerns, even in the schools of primary and of general instruction. In proportion as this policy was more eagerly pursued, the Bohemians clung with the greater attachment to their ancient dialect, which they justly regarded as the principal remaining badge and guarantee of their distinct nationality. However the highest magnates may have been inclined upon the subject, the great body of resident nobility at all events, the landowners, traders, and men of science, partook the feelings of the people. Their ancient national dislike to the Germans burst forth with unwonted vehemence; and on the occasion of certain royal ordinances issued some years ago, bearing strongly on the point in question, evident indications occurred that the measures proposed, if attempted to be carried into effect, would be forcibly resisted. It was then that the Crown, with its usual tact and wisdom, completely changed the course of its policy. * * * * In the present instance, not only were the ordinances abandoned, but the Crown seemed to throw itself into the opposite extreme. An official patronage was afforded to the popular dialect, which it had not enjoyed before. Societies have been formed under the immediate patronage of the grand burggrave, and the direction of Count Sternberg, for the cultivation of Bohemian literature: and plays are performed in the Bohemian language, at the theatre of Prague."—Vol. i. p. 110—2.

Mr. Turnbull adds the following remarks on the policy of the Austrian Government in this respect in other parts of Austria.

"It has been the policy of Austria to introduce, as far as in her lay, a uniformity, not of institutions only, but of language also, in the several portions of her dominions; but her success in doing so has been far from perfect. The feelings of a people are generally more interwoven with the familiar sounds and the small every day habits which they have derived from their parents, than with those great political maxims on which their government may be based. It was the decree of Joseph II. ordaining that the German language alone should be taught and used in Hungary, that roused the spirit of national resistance; and this has gone on increasing in force, until at length, subverting alike both the German and the Latin, it has compelled the Crown to ratify a law, whereby the still meagre and unformed Asiatic dialect, termed the Magyar or proper Hungarian, is made the language of the schools, the diet, and the courts. In Italy also, the government is now engaged in a somewhat similar attempt. It is striving to introduce the German language into the primary schools, evidently aiming at its establishment as the official, and even, if possible, the vernacular tongue: but slow and cautious must be its proceedings in this respect, or

they will be subversive of its own designs, and cause a reaction fearful as that of Hungary."—Vol. ii. p. 402.

NOTE O. (p. 294.)

TRANSLATION.

"The first important step towards restricting the power of the viceroys was the custom first introduced after Alboquerque's death of never allowing a viceroy to remain above three years in office, which, in process of time, became a fixed principle of the Portuguese Government. It is manifest that as far as this became an inviolable rule, (and the government never departed from it but in extreme cases,) it must have exercised an important influence on the affairs of the Portuguese in India. Many arguments may be adduced in favour of this regulation: in the first place, the danger of allowing so much power to remain long in the possession of one individual, lest he should in the end be tempted by it to make himself independent. Another motive was the power which the government thus acquired of more frequently rewarding distinguished merit by conferring so high a dignity, and sometimes even of removing in an honourable manner those obnoxious to the hatred of the court. It cannot, however, be denied that the consequences of this custom generally were most injurious to the Portuguese interests; for, although a frequent change of the governors was in some cases highly advantageous and even indispensable, it was nevertheless extremely unwise to erect this practice into an invariable rule, and particularly to change the viceroys at stated and foreknown periods.

"In the first place, the Portuguese were, by the operation of this rule, deprived of the advantages which their Indian affairs would have derived from a longer continuance of the government of such men as Ataide and many more. In the short space of three years, a period barely sufficient for acquiring a knowledge of the intricate affairs of the Portuguese in their distant and extensive territories, it was impossible for a viceroy to undertake any substantial improvements, or to execute measures of general importance. We frequently find it recorded that a viceroy, on the point of carrying into effect some long prepared and most important reform, was arrested by the arrival of his successor; and in later times, it was a common subject of complaint that a viceroy spent the first year solely in learning the actual posture of affairs; the second in enriching himself; and that at the utmost, in the third year he went, accompanied by a considerable fleet, to visit the Portuguese possessions from Coulan to Ormuz, and to make arrangements for the arrival of his successor.

"Another evil resulting from the certainty of being recalled in three years, without reference to their merits or demerits, was that it destroyed on the part of the viceroys any exertion which the hope of being continued in office might have induced them to make, and in many cases it even acted as an incentive to avarice and rapacity. Experience had but too clearly shown that a viceroy returning from India with sufficient riches could always, in case of need, find lenient judges. Thus, in course of time, this important office came to be considered merely as a benefice held for three years, and the sole object of those on whom it was bestowed was to enrich themselves.

The pernicious effects of this state of things naturally increased the more, as in later times it was usual to appoint men who, when even distinguished for merit in other departments of the government, (which was often not the case,) were unfit for the office of viceroy, never having been in India; and those who had served there were seldom or never chosen. By this means the office of viceroy was conferred on men totally ignorant of the affairs of Portuguese India, and it is manifestly impossible that the best intentions could have enabled them to do anything at all important in the short space of three years.

"In addition to the disadvantages already enumerated, the frequent changes of the chief governors naturally caused corresponding changes in the whole system of government. The appointments to subordinate governorships and other offices also were in the hands of the viceroys, and these they commonly filled with their relations, friends, and dependents, immediately upon their accession to the viceroyalty.

"It was natural that this power should lead to great abuses; though it appears scarcely credible that a viceroy should appoint a son twelve years old to the important office of Governor of Ormuz; a fact related by a trustworthy historian. Thus to the constant changes in the principles of government produced by these frequent alterations of all the authorities was added the unavoidable evil that the subaltern officers of government followed the example of the viceroy, and were only intent upon gaining all the wealth they could during their short stay in office, and then returning loaded with it to their own country, where money was the chief, and indeed almost sole recommendation. Another most serious evil was, that even from the time of Almeida, the Portuguese viceroys seem to have made it a sort of rule, to which there were very few exceptions, that the actual viceroy should be the implacable enemy of his predecessor, doing everything in his power to destroy what the other had done, and, if possible, by following an entirely opposite course of policy, to raise his own merits at the expense of his predecessor's reputation.

"The limitation of the power of the viceroys to the short space of three years was not the only measure of the Portuguese Government for diminishing their seemingly formidable influence; other steps were taken with the same purpose. In the first place, a council was associated to the viceroy, which was to be consulted on all occasions of any importance; and, without the approval of this body, nothing decisive could be done. Another measure was the repeated formation of several Indian governorships independent of the viceroy; as might be anticipated, the envy and jealousies which these territorial divisions soon caused among the different governors contributed to the decline of the Portuguese power already extremely feeble in their eastern possessions.

"Even under the vice-regency of the great Alboquerque we find frequent mention of a council composed of the principal officers, without whose approval he could do nothing of importance. The same body is often alluded to under the governments of his successors, and we are informed that the irresolution of this council caused the miscarriage of many of the most useful measures. This inconvenience was to be anticipated, as the inferior officers rarely possessed the distinguished talents of many of the viceroys; and

envy and party feeling would naturally prevail in a council thus constituted. We have not been able to find any exact information as to the manner in which this body was organized. It appears, however, to have been at first composed of the principal officers of the army, and therefore to have controlled the power of the viceroy much more in military than in civil affairs. Its consideration and influence seem to have constantly increased under the succeeding viceroys, as its interference in all matters of importance is more and more frequently recorded. The mischievous effects of this council must have been doubly felt from the difficulty of appealing to the decision of the Court of Lisbon in case of a dispute, owing to the great distance and the length of time required for communication.

"The increased dependence of the viceroy upon his council was accompanied by a corresponding increase in the weakness of the Portuguese government. It was seldom that a viceroy was gifted with the courage of an Alboquerque or a Joao de Castro, who more than once ventured on the perilous step of doing what they judged to be for the advantage of the public, in spite of the opposition made by the council; and indeed it was fortunate for them that the beneficial results justified a proceeding so contrary to the rules of the Portuguese Government. By far the greater number of viceroys were too much devoted to their own interests ever to dream of incurring so heavy a responsibility for the public good. In the year 1551, when Alfonso de Noronha was appointed viceroy, we find the first account of a formal council, consisting of ten or twelve persons chosen by the government, whose advice the viceroy was to follow on all occasions, even when he did not ask it.

"A second most injudicious arrangement, which the kings of Portugal had very early attempted to introduce into India, and by which the Portuguese power in those regions must have been seriously enfeebled, was the division of their eastern possessions into several distinct governments independent of each other. As early even as during Alboquerque's vice-regency, this division was begun. In the year 1510, Emanuel the Great appointed a governor to the colonies on the south-eastern coast of Africa, whose power extended from Sofala to Cambays, independently of the captain-general. At about the same period, Malacca was made an independent government. It is true that the arguments advanced in Portugal in favour of this proceeding were very plausible. The principal reason was, that the vast region stretching from the Cape of Good Hope to the remotest boundaries of India was too extensive for the supervision of one individual. But even then Alboquerque took an opposite, and, as the event has proved, a just view of the affair. He saw that, by thus breaking up these settlements into several governments independent of each other, no good result could be effected; but, on the contrary, that a death-blow would be given to the power of Portugal in the East. He perceived that it was only by the union of all the Portuguese forces under one head, —a union which would permit the force of the whole body to be brought in a moment to bear on any point where danger was impending,—that it was possible to retain possessions, the size of which was out of all proportion to their means of defence. Besides this, Alboquerque could not fail to foresee that the envy and jealousy which would inevitably arise amongst the different governors would

in itself be quite sufficient to prevent any beneficial results. He did not, therefore, rest until he had averted the impending evil.

"The Portuguese government, nevertheless, by no means gave up the idea, and during the vice-regency of Alboquerque's successor, Lopez Soarez de Albergaria, fresh attempts were made to execute this favourite project, and were frequently renewed under his successors, though usually without success. Since the time of Lopez Soarez de Albergaria, it was also customary to summon the viceroys, on their return from India, to render an account before the Portuguese Tribunal of Finance, but those who came back rich usually found means to elude the severity of this court.

"The project of dividing the Indian possessions into several distinct governments was eagerly resumed during the reign of Sebastian. In the year 1572, when Antonio de Noronha was sent out as viceroy to India, the Indian possessions were divided into three separate governments, and Noronha, who saw the evils of that division, and rejected the demands of the two governors under different pretexts, was deposed in consequence of their accusations. Nevertheless, his successor Baretto, who had been governor of Malacca, and had caused Noronha's recal, found himself compelled to act in the same manner towards Pereira, who succeeded him in the governorship of Malacca; contrary to the express commands of the Court, which on this occasion did not think it necessary to assert Pereira's dignity so strongly.

"From the preceding data we may safely conclude that the constant endeavour of the Portuguese government was to diminish the power of the viceroy of India as much as possible. The circumstance that these endeavours most frequently failed, especially when really great men were at the head of the Indian affairs, affords the most convincing proof that the mischievous tendency of this policy was strongly felt in India itself."—Saalfeld, Geschichte des Portugiesischen Kolonialwesens in Ostindien, pp. 236—47.

NOTE P. (p. 300.)

Burke, in his "Observations on a late State of the Nation," (published in 1769,) makes the following remarks on the plan of a representation of the American colonies in the British Parliament.

"Perhaps it may be some time before this hopeful scheme can be brought to perfect maturity, although the author seems to be no wise aware of any obstructions that lie in the way of it. He talks of his union, just as he does of his taxes and his savings, with as much *sang froid* and ease as if his wish and enjoyment were exactly the same thing. He appears not to have troubled his head with the infinite difficulty of settling that representation on a fair balance of wealth and numbers throughout the several provinces of America and the West Indies, under such an infinite variety of circumstances. It costs him nothing to fight with nature, and to conquer the order of Providence, which manifestly opposes itself to the possibility of such a parliamentary union.

"But let us, to indulge his passion for projects and power, suppose the happy time arrived, when the author comes into the ministry, and is to realize his speculations. The writs are issued for electing members for America and the West Indies. Some provinces receive

them in six weeks, some in ten, some in twenty. A vessel may be lost, and then some provinces may not receive them at all. But let it be, that they all receive them at once, and in the shortest time. A proper space must be given for proclamation and for the election; some weeks at least. But the members are chosen; and if ships are ready to sail, in about six more they arrive in London. In the meantime the parliament has sat, and business far advanced without American representatives. Nay, by this time, it may happen that the parliament is dissolved; and then the members ship themselves again, to be again elected. The writs may arrive in America before the poor members of a parliament in which they never sat can arrive at their several provinces. A new interest is formed, and they find other members are chosen, whilst they are on the high seas. But if the writs and members arrive together, here is at best a new trial of skill amongst the candidates, after one set of them have well aired themselves with their two voyages of 6,000 miles.

"However, in order to facilitate every thing to the author, we will suppose them all once more elected, and steering again to Old England, with a good heart, and a fair westerly wind in their stern. On their arrival they find all in a hurry and bustle; in and out, condolence and congratulation; the Crown is demised. Another parliament is to be called. Away back to America again on a fourth voyage, and to a third election. Does the author mean to make our kings as immortal in their personal as in their political character? or, whilst he bountifully adds to their life, will he take from them their prerogative of dissolving parliaments, in favour of the American union? or, are the American representatives to be perpetual, and to feel neither demises of the Crown, nor dissolutions of parliaments?

"But these things may be granted to him without bringing him much nearer to his point. What does he think of re-election? Is the American member the only one who is not to take a place, or the only one to be exempted from the ceremony of re-election? How will this great politician preserve the right of electors, the fairness of returns, and the privilege of the House of Commons, as the sole judge of such contests? It would undoubtedly be a glorious sight to have eight or ten petitions, or double returns, from Boston and Barbadoes, from Philadelphia and Jamaica, the members returned, and the petitioners with all their train of attorneys, solicitors, mayors, select men, provost marshals, and above five hundred or a thousand witnesses, come to the bar of the House of Commons. Possibly, we might be interrupted in the enjoyment of this pleasing spectacle, if a war should break out, and our constitutional fleet, loaded with members of parliament, returning officers, petitions, and witnesses, the electors and elected, should become a prize to the French or Spaniards, and be conveyed to Carthagena or to La Vera Cruz, and from thence perhaps to Mexico or Lima, there to remain until a cartel for members of parliament can be settled, or until the war is ended.

"In truth, the author has little studied this business, or he might have known, that some of the most considerable provinces of America, such, for instance, as Connecticut and Massachusetts Bay, have not in each of them two men who can afford, at a distance from their estates, to spend a thousand pounds a-year. How can these provinces be represented at Westminster? If their province pays

them, they are American agents, with salaries, and not independent members of parliament. It is true, that formerly in England members had salaries from their constituents; but they all had salaries, and were all, in this way, upon a par. If these American representatives have no salaries, then they must add to the list of our pensioners and dependents at Court, or they must starve. There is no alternative."—(Works, vol. ii. p. 138—42.)

NOTE Q. (p. 302.)

The following is Mr. Haliburton's account of the power of the supreme government of England over its dependencies.

"To what extent the British Parliament has a right to interpose its authority, or how far the power of the Colonial Assembly extends, it is impossible to ascertain with accuracy. The doctrine of the omnipotence of the one, and the independence of the other, has at different times been pushed to an extreme by the advocates of each. The true distinction appears to be, that parliament is supreme in all external, and the Colonial Assembly in all internal matters. The unalterable right of property has been guaranteed to the colonies, by the Act renouncing the claim of taxation, the 18th Geo. III. * * * * * * Taxation is *ours*, commercial regulation is *theirs;* this distinction, says a distinguished statesman, is involved in the abstract nature of things. Property is private, individual, abstract; and it is contrary to the principles of natural and civil liberty, that a man should be divested of any part of his property without his consent. Trade is a complicated and extended consideration; to regulate the numberless movements of its several parts, and to combine them in one harmonious effect for the good of the whole, requires the superintending wisdom and energy of the supreme power of the empire. The colonist acknowledges this supremacy in all things, with the exception of taxation, and of legislation in those matters of internal government to which the local assemblies are competent. * * * But in matters of a local nature, the regal control is well secured by the negative of the governor; by his standing instructions not to give his assent to any law of a doubtful nature without a clause suspending its operation, until His Majesty's pleasure be known, and by the power assumed and exercised, if disagreeing to any law within three years after it has passed the Colonial legislature. With these provinces it is absurd to suppose, whatever may be said to the contrary, that the local assemblies are not supreme within their own jurisdiction; or that a people can be subject to two different legislatures; exercising at the same time equal powers, yet not communicating with each other, nor, from their situation, capable of being privy to each other's proceedings."

* * * * * *

"I have already observed that the true line is that Parliament is supreme in all external, and the Colonial assemblies in all internal legislation; and that the colonies have a right to be governed, within their own jurisdiction, by their own laws, made by their own internal will. But if the colonies exceed their peculiar limits, from other alliances, or refuse obedience to the general laws for the regulation of commerce or external government, in these cases there

must necessarily be a coercive power lodged somewhere; and cannot be lodged more safely for the empire at large than in parliament, which has an undoubted right to exercise it in such cases of necessity. It is in this manner the passage alluded to, in the Commentaries, must be understood, which states those laws to be binding on the colonies that include them by express words, and the English Act of Parliament is generally received in the same sense."—(Vol. ii. p. 346.)

From the last of the preceding passages it appears to be Mr. Haliburton's opinion that there are certain subjects in which the local government of an English dependency is *legally*, as well as *practically*, supreme. If this be his meaning, the statement is erroneous.

THE END.

ERRATA.

Page 81, line 8. For "subordinate legislature," read, "subordinate government."

Page 82, line 24. For "remembered," read, "remarked."

Page 88, note * For "ch. VIII. § 2." read "ch. IX." ib. note †, dele § 2.

Page 155, line 3. For "the subordinate government of Ireland," read, "the supreme government of Ireland."

Page 260, line 12. For "from one to another," read "from one country to another."

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